



PROBATE & ESTATE PLANNING SECTION

Agenda and Attachments for

Saturday, October 18, 2025

Meeting of the Council of the Probate and Estate Planning Section

Evergreen Resort
7839 46 1/2 Road, Cadillac, Michigan 49601

Or *via* Zoom

**Probate & Estate Planning Section of the
State Bar of Michigan**

You are invited to the October meetings of the Committee on Special Projects (CSP) and
the Council of the Probate & Estate Planning Section:

**Saturday, October 18, beginning at 9 AM
at Evergreen Resort, 7839 46 1/2 Road, Cadillac, Michigan 49601**

Remote participation by Zoom will be available. So, you are also invited . . .

to a Zoom meeting.

When: Oct 18, 2025, 09:00 AM Eastern Time (US and Canada)

Register in advance for this meeting:

<https://us02web.zoom.us/meeting/register/cRGvoDsQMyWh3xT-pK1Fw#/registration>

After registering, you will receive a confirmation email containing information about joining the meeting.

If you are calling in by phone, email your name and phone number to Susan Chalgian

schalgian@mielderlaw.com, we will put your name in a zoom user list that

will identify you by name when you call in.

Please note that the Zoom feature of these meetings entails that they will be recorded.

This will be a regular in person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

Melisa Mysliwec
Section Secretary

171 Monroe Avenue NW, Ste 1000
Grand Rapids, MI 49503
Phone: (616) 742-3936
Email: Melisa.Mysliwec@btlaw.com

**Officers of the Council
for 2025-2026 Term**

Office	Officer
Chairperson	Nathan R. Piwowarski
Chairperson Elect	Richard C. Mills
Vice Chairperson	Christine M. Savage
Secretary	Melisa M. W. Mysliwiec
Treasurer	Angela M. Hentkowski

**Council Members
for 2025-2026 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Augustin, Ernsie	2023 (1 st term)	2026	Yes
Mallory, Alexander	2023 (1 st term)	2026	Yes
Anderton V, James F.	2023 (2 nd term)	2026	No
David, Georgette E.	2023 (2 nd term)	2026	No
Hilker, Daniel	2023 (2 nd term)	2026	No
Krueger III, Warren H.	2023 (2 nd term)	2026	No
Glazier, Sandra D.	2024 (2 nd term)	2027	No
Sprague, David	2024 (2 nd term)	2027	No
Wrock, Rebecca K.	2024 (2 nd term)	2027	No
Cieslik, Kathleen A.	2024 (1 st term)	2027	Yes
Davis, Patricia E.	2024 (1 st term)	2027	Yes
Reister, Nicholas A.	2024 (1 st term)	2027	Yes
Borst, Daniel W.	2025 (2 nd term)	2028	No
Chalgian, Susan L.	2025 (2 nd term)	2028	No
Shelton, Michael D.	2025 (2 nd term)	2028	No
Luckenback, Elizabeth L.	2025 (1 st term)	2028	Yes
Hon. Schimke, Sara A.	2025 (1 st term)	2028	Yes
Viviano, Joseph J.	2025 (1 st term)	2028	Yes

Ex Officio Members of the Council

Christopher Ballard; Robert D. Brower, Jr.; Douglas G. Chalgian; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Shaheen I. Imami; Robert B. Joslyn; Mark E. Kellogg; Kenneth E. Konop; Marguerite Munson Lentz; Nancy L. Little; James H. LoPrete; Richard C. Lowe; David P. Lucas; Katie Lynwood; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; David L.J.M. Skidmore; James P. Spica, James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Marlaine C. Teahan; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack

State Bar of Michigan
Probate and Estate Planning Section

2024–25 Standing Committees

Standing Committee	Mission	Chairperson	Members
Amicus Curiae	Review litigants’ applications and Courts’ requests for the Section to sponsor amicus curiae briefs in pending appeals cases relating to probate, and estate and trust planning, and oversee the work of legal counsel retained to prepare and file amicus briefs	Andrew W. Mayoras	Ryan P. Bourjaily Patricia Davis Angela Hentkowski Scott Kraemer Neil J. Marchand Laura E. Morris Kurt A. Olson David L.J.M. Skidmore Trevor J. Weston Timothy White
Annual meeting	Plan the Section’s Annual Meeting	Katie Lynwood [as Chair]	[Chair only]
Awards	Periodically make recommendations regarding recipients of the Michael Irish Award, and consult with ICLE regarding periodic induction of members in the George A. Cooney Society	James P. Spica [as immediate past Chair]	David L.J.M. Skidmore Mark E. Kellogg [as 2nd and 3rd most recent past Chairs]
Budget	Develop the Section’s annual budget	Christine M. Savage [as immediate past Treasurer]	Richard C. Mills Melisa M.W. Mysliwiec [as incoming Treasurer and immediate past Secretary]
Bylaws	Review the Section’s Bylaws, to ensure compliance with State Bar requirements, to include best practices for State Bar Sections, and to assure conformity to current practices and procedures of the Section and the Council, and make recommendations to the Council regarding such matters	David Lucas	Christopher A. Ballard John Roy Castillo Nancy H. Welber
Charitable and Exempt Organizations	Consider federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations, and make recommendations to the Council regarding such matters	Rebecca K. Wrock	Celeste E. Arduino Robin Ferriby Brian Heckman Richard C. Mills John McFarland Kate L. Ringler Matt Wiebe
Citizens Outreach	Provide opportunities for education of the public on matters relating to probate, and estate and trust planning	Kathleen M. Goetsch	Ernsie Augustin Kathleen Cieslik David Lucas Hon. Michael J. McClory Neal Nusholtz

State Bar of Michigan
Probate and Estate Planning Section
2024–25 Standing Committees

Committee on Special Projects	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Daniel S. Hilker	[Committee of the whole]
Court Rules, Forms, & Proceedings	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Chair: Patricia Davis; Vice Chair: Georgette E. David	JV Anderton Ryan Buck Susan L. Chalgian Daniel S. Hilker Hon. Michael L. Jaconette Andrew W. Mayoras Hon. Michael J. McClory Dawn Santamarina Marlaine C. Teahan
Electronic Communications	Oversee all matters relating to electronic and virtual communication matters, and make recommendations to the Council regarding such matters	Susan L. Chalgian	Angela Hentkowski Michael G. Lichterman Christine Savage [as Secretary]
Ethics & Unauthorized Practice of Law	Consider matters relating to ethics and the unauthorized practice of law with respect to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Alex Mallory	William J. Ard Raymond A. Harris J. David Kerr Neil J. Marchand Robert M. Taylor Amy Rombyer Tripp
Guardianship, Conservatorship, & End of Life Committee	Consider matters relating to Guardianships and Conservatorships, and make recommendations to the Council regarding such matters	Sandra Glazier	William J. Ard Michael W. Bartnik Kimberly Browning Susan L. Chalgian Kathleen A. Cieslik Georgette E. David Kathleen M. Goetsch Elizabeth Sue Graziano Raymond A. Harris Hon. Michael L. Jaconette Hon. Michael J. McClory Hon. David M. Murkowski Kurt A. Olson Nathan R. Piwowarski Katie Lynn Ringler Hon. Avery Rose Dawn Santamarina David L.J.M. Skidmore James B. Steward Paul S. Vaidya Karen S. Willard

State Bar of Michigan
 Probate and Estate Planning Section
 2024–25 Standing Committees

Legislation Development and Drafting	Consider matters with respect to statutes relating to probate, and estate and trust legislation, consider the provisions of introduced legislation and legislation anticipated to be introduced with respect to probate, and estate and trust planning, draft proposals for legislation relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Robert P. Tiplady and Richard C. Mills	Aaron A. Bartell Howard H. Collens Georgette David Kathleen M. Goetsch Daniel S. Hilker Michael G. Lichterman David P. Lucas Katie Lynwood Alex Mallory Nathan Piwowarski Nicholas Reister Christine M. Savage James P. Spica David Sprague
Legislation Monitoring & Analysis	Monitor the status of introduced legislation, and legislation anticipated to be introduced, regarding probate, and estate and trust planning, and communicate with the Council and the Legislation Development and Drafting Committee regarding such matters	Michael D. Shelton	Elizabeth Graziano Angela Hentkowski Daniel S. Hilker Katie Lynwood Nicholas Reister David Sprague
Legislative Testimony	As requested and as available, the Members of the Section will give testimony to the Legislature regarding legislation relating to probate, and estate and trust planning	Daniel S. Hilker [as CSP Chair]	[Various Section Members]
Membership	Strengthen relations with Section members, encourage new membership, and promote awareness of, and participation in, Section activities	Ernsce Augustin	Susan L. Chalgian Angela Hentkowski Kate L. Ringler
Nominating	Nominate candidates to stand for election as the officers of the Section and the members of the Council	David L.J.M Skidmore [as most senior immediate past Chair]	Mark E. Kellogg James P. Spica [as 1st and 2nd most recent past Chairs]
Planning	Periodically review and update the Section's Plan of Work	Katie Lynwood [as Chair]	Nathan Piwowarski Richard C. Mills Christine M. Savage Melisa M.W. Mysliwiec James P. Spica [as Officers and immediate past Chair]

State Bar of Michigan
 Probate and Estate Planning Section
 2024–25 Standing Committees

Probate Institute	Work with ICLE to plan the ICLE Probate and Estate Planning Institute	Richard C. Mills [as Vice Chair]	[Chair only]
Real Estate	Consider real estate matters relating to probate, and estates and trusts, and make recommendations to the Council regarding such matters	Angela Hentkowski	Carlos Alvarado-Jorquera Jeffrey S. Ammon JV Anderton William J. Ard Leslie A. Butler Patricia Davis J. David Kerr Angela Hentkowski Mark E. Kellogg Michael G. Lichterman Melisa M.W. Mysliwicz Alaina M. Nelson Michael D. Shelton David Sprague James B. Steward
State Bar & Section Journals	Oversee the publication of the Section’s Journal, and assist in the preparation of periodic theme issues of the State Bar Journal that are dedicated to probate, and estates and trusts	Melisa M.W. Mysliwicz, Managing Editor	Diane Kuhn Huff Nancy L. Little Neil J. Marchand Richard C. Mills Kurt A. Olson Molly P. Petitjean Rebecca K. Wrock
Tax	Consider matters relating to taxation as taxation relates to probate, and estates and trusts, and make recommendations to the Council regarding such matters	JV Anderton	Daniel Borst Jonathan Beer Mark DeLuca Warren H. Krueger, III Robert Labe John McFarland Neal Nusholtz Nicholas Reister Christine M. Savage

The Probate and Estate Planning Section Chair and Chair Elect are ex-officio Members of each Standing Committee.

State Bar of Michigan
Probate and Estate Planning Section

2024–25 Ad Hoc Committees

Ad Hoc Committee	Mission	Chairperson	Members
Assisted Reproductive Technology	Review the 2008 Uniform Probate Code Amendment for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction, and make recommendations to the Council regarding such matters	Nancy H. Welber	Ernschie Augustin Susan L. Chalgian Nazneen Hasan Laura Jeltema Christina Lejowski Nathan Piwowarski
Electronic Wills	Review proposals for electronic wills, including the Uniform Law Commission's draft of a Uniform Law, and make recommendations to the Council regarding such matters	Kathleen Cieslik	Kimberly Browning Georgette David Sandra Glazier Douglas A. Mielock Neal Nusholtz Christine M. Savage James P. Spica
Fiduciary Exception to the Attorney-Client Privilege	Consider whether there should be some exception to the rule that beneficiaries of an estate or trust are entitled to production of documents regarding the advice given by an attorney to the fiduciary, and make recommendations to the Council regarding such matters	Warren H. Krueger, III	Aaron A. Bartell Ryan P. Bourjaily
Nonbanking Entity Trust Powers	Consider whether there should be legislation granting trust powers to nonbanking entities, and make recommendations to the Council regarding such matters	James P. Spica and Robert P. Tiplady	JV Anderton Laura L. Brownfield Kathleen Cieslik Elise J. McGee Mark K. Harder Richard C. Mills Carol A. Sewell Joe Viviano
Premarital Agreements	Consider whether there should be legislation regarding marital property agreements, and	Christine M. Savage	Daniel W. Borst Georgette David Sandra Glazier Angela Hentkowski David Sprague

Uniform Community Property Disposition at Death Act	Consider the Uniform Community Property Disposition at Death Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Kathleen Cieslik Richard C. Mills Christine M. Savage David Sprague Rebecca Wrock
Undue Influence	Consider the definition of undue influence and attendant evidentiary presumptions, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Sandra Glazier Hon. Michael L. Jaconette Warren H. Krueger, III John Mabley Andrew W. Mayoras Laura E. Morris Hon. David Murkowski Kurt A. Olson David L.J.M. Skidmore
Uniform Fiduciary Income & Principal Act	Consider the Uniform Fiduciary Income and Principal Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	James P. Spica	Anthony Belloli Kathleen Cieslik Marguerite Munson Lentz Richard C. Mills Robert P. Tiplady Joe Viviano
Uniform Partition of Heirs Property Act	Consider the Uniform Partition of Heirs Property Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Marguerite Munson Lentz Alex Mallory Elizabeth McLachlan Christine Savage David Sprague Rebecca Wrock
Various Issues Involving Death and Divorce	Should EPIC be changed so that a pending divorce affects priority to serve in a fiduciary position; Should Council explore whether EPIC should be changed so that a pending divorce affects intestacy, elective share, exemptions and allowances, etc. Should “affinity” be defined to prevent elimination of stepchildren’s gifts by operation of law after divorce or, instead, should there be an exception allowing gifts to stepchildren on a showing of, Perhaps, clear and convincing evidence demonstrating that the Settlor would not have intended the omission of the stepchild?	Daniel Borst Sean Blume	Ernsacie Augustin Georgette David Hon. Shauna Dunning Katie Lynwood Andy Mayoras Elizabeth Siefker

The Probate and Estate Planning Section Chair and Chair Elect are ex-officio Members of each Ad Hoc Committee.

State Bar of Michigan
Probate and Estate Planning Section

2024–25 Liaisons

Association	Liaison
Alternative Dispute Resolution Section	John Hohman
Business Law Section	Mark E. Kellogg
Elder Law and Disability Right Section	Angela Hentkowski
Family Law Section	Anthea E. Papista
Institute of Continuing Legal Education	Lindsey DiCesare
Law Schools	Savina Mucci
Michigan Bankers Association	David Sprague
Michigan Legal Help/Michigan Bar Foundation	Kathleen Goetsch
Michigan Probate Judges Association	Hon. David Murkowski
Probate Registers	Ryan J. Buck
Real Property Law Section	Angela Hentkowski
Supreme Court Administrative Office	Patricia Davis
State Bar	Jennifer Hatter
Taxation Section	Neal Nusholtz
Uniform Law Commission	James P. Spica

The mission of each Liaison is to develop and maintain bilateral communication between his or her association and the Probate and Estate Planning Section of the State Bar of Michigan on matters of mutual interest and concern.

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN
Saturday, October 18, 2025**

Regular Meeting Agenda

- I. Commencement (Nathan Piwowarski)
 - A. Call to Order and Welcome
 - B. Zoom Roll Call
 - C. Confirmation of In-Person Attendees
 - D. Excused Absences (Melisa Mysliwec, Sandy Glazier, Nick Reister, and Kathleen Cieslik)
- II. Monthly Reports
 - A. Lobbyist's Report (Public Affairs Associates)
 - B. Minutes of Prior Council Meetings (Melisa Mysliwec / Chris Savage) – **Attachment 1**
 - C. Chair's Report (Nathan Piwowarski)
 - D. Treasurer's Report (Angela Hentkowski / Melisa Mysliwec) – **Attachment 2**
- III. Committee Reports
 - A. Committee on Special Projects (Dan Hilker)
 - B. Amicus Curiae (Andy Mayoras)
 - C. Annual Meeting (Nathan Piwowarski)
 - D. Awards (Katie Lynwood)
 - E. Budget (Melisa Mysliwec)
 - F. Bylaws (David Lucas)
 - G. Charitable and Exempt Organizations (Rebecca Wrock)
 - H. Citizens Outreach (Kathleen Goetsch)
 - I. Court Rules, Forms, and Proceedings (Patricia Davis and Georgette David)
 - J. Electronic Communications (Susie Chalgian)
 - K. Ethics and Unauthorized Practice of Law (Alex Mallory) – **Attachment 3**
 - L. Guardianship, Conservatorship, and End of Life (Sandy Glazier)
 - M. Legislation Development and Drafting (Rob Tiplady and Rick Mills)
 - N. Legislation Monitoring and Analysis (Mike Shelton)

- O. Legislative Testimony (Dan Hilker)
- P. Membership (Ernschie Augustin)
- Q. Nominating (Jim Spica)
- R. Planning (Katie Lynwood)
- S. Probate Institute (Christine Savage)
- T. Real Estate (Angela Hentkowski)
- U. State Bar and Section Journals (Melisa Mysliwiec)
- V. Tax (J.V. Anderton) – **Attachment 4**
- W. Assisted Reproductive Technology (Nancy Welber)
- X. Electronic Wills (Kathleen Cieslik)
- Y. Fiduciary Exception to the Attorney-Client Privilege (Warren Krueger)
- Z. Nonbanking Entity Trust Powers (Jim Spica and Rob Tiplady)
- AA. Premarital Agreements (Chris Savage)
- BB. Trust Accounts (___?___)
- CC. Uniform Community Property Disposition at Death Act (Jim Spica)
- DD. Uniform Guardian, Conservatorship, and Protective Arrangements Act (Nathan Piwowarski and Kathleen Cieslik)
- EE. Undue Influence (Ken Silver) – **Attachment 5**
- FF. Uniform Fiduciary Income and Principal Act (Jim Spica)
- GG. Various Issues Involving Death and Divorce (Dan Borst and Sean Blume)
- IV. Good of the Order
- V. Adjournment of Regular Meeting

Roundtable (Time Permitting)

ATTACHMENT 1

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN**

Friday, September 12, 2025

Minutes

I. Commencement: (Piwowarski)

A. Call to Order and Welcome

Chairperson Piwowarski called the meeting to order at 10:30 a.m. noting that the meeting was being recorded and that the resulting recording is to be deleted once the minutes of the meeting have been submitted by the Secretary and accepted by the Council.

B. Zoom Roll Call

Andrew Mayroas, Rebecca Bechler (Public Affairs Associates), James Steward, Brianne Gidcumb, David Skidmore, Ernsie Augustine, Kenneth Silver, Austin McKee, Jonathan Beer, Kathleen Cieslik, David Sprague, Sandra D. Glazier, Warren Krueger, David Lentz, James F. Anderton, John Mabley, Alexander S. Mallory, Daniel W. Borst, Elizabeth Siefker, Josephine Parrinello, Krysten Hergert, Patricia E. Davis, Marguerite Munson Lentz, Georgette David, Rebecca Wrock, Ryan Buck, Rachael Sedlacek, Joseph Viviano, Hon. Shauna Dunnings, Rachel Kilgallen, Dustin Foster, Nicholas Reister, Michael Shelton, and Karen Whitcomb.

Confirmation of In-Person Attendees

Katie Lynwood, Angela Hentkowski, Daniel Hilker, Michael Lichterman, Nathan R. Piwowarski, Christine Savage, Hon. David Murkowski, James P. Spica, Susan Chalgian, Noel Martzloff, Mitchell Sickon, Chad McDonald, Melisa M. W. Mysliwiec, and David Lucas.

C. Excused Absences

Michael Shelton and Richard C. Mills

II. Monthly Reports

A. Lobbyist's Report (Public Affairs Associates):

- i. Ms. Beckler reported that Senate Bill 160, which is the premarital agreement bill, with Senator Sue Shink, passed the Senate. PAA is working with Representative Sarah Lightner. Rep. Lightner has concerns with Senate Bill 160, as passed by the Senate and would prefer that there's an agreement

reached between the Family Law and Probate and Estate Planning sections, and until that happens, Ms. Bechler does not think Rep. Lightner has an interest in moving this bill along.

- ii. HB 4033 and 4034 were passed in the House unanimously earlier this year. Rep. Lightner is trying to get them in front of the Senate Judiciary Committee by the end of this year.
- iii. House Committee action is expected on HB 4512 and 4408. Those related to powers of attorney and duties and powers of a trustee. They are on the docket to pass out of house judiciary by the end of the year.

B. Minutes of Prior Council Meeting – June (Christine Savage) – **Attachment 1**. Chris Savage motioned, and it was supported, accepting the June minutes. Motion carried.

C. Chair's Report (Nathan Piwowarski) Mr. Piwowarski reported:

- i. Mr. Piwowarski recognized Katie Lynwood for her dedication and service over the years to the section.
- ii. Mr. Piwowarski thanked Ken Silver, Andy Mayoras, and Hon. Dunnings for their dedication and service to the Section.
- iii. Mr. Piwowarski welcomed Hon. Schimke, Joseph Viviano, and Elizabeth L. Luckenbach to the council. He also thanked the officers for their involvement.
- iv. Mr. Piwowarski thanked the Section Administrative Assistant, Andrea Neighbors, for her dedication to the Section. Andrea Neighbors has stepped down and is being replaced by Theresa Castle.
- v. The letter from Katie Lynwood to Representative Lightner regarding the pre-marital agreement legislation has been well received.
- vi. There was an electronic vote between the June and September meetings regarding the Fowler matter and Andrew Mayoras authored an Amicus brief in that matter.
- vii. The Chair's dinner this year will be on Friday, October 17th at The Cadillac Grill and invitations will be going out to invitees this weekend.
- viii. The section is co-sponsoring an educational event with the Institute of Continuing Legal Education on September 30th and it is a virtual event. Sam Donaldson will be the expert in estate planning presenting on income tax and transfer tax planning.
- ix. The Council's plan of work will be in the October meeting materials.

- x. The existing committees will be preserved with the addition of two new committees, the ad hoc Committee on trust accounts and the ad hoc Committee for the Uniform Guardianship, Conservatorship, and Protective Arrangements Act. Kathleen Cieslik will serve as the Vice-Chair, Jim Spica offered to serve as ULC liaison, and Judge Murkowski and Sandy Glazier have agreed to serve on the committee.
- D. Treasurer's Report (Melisa Mysliwiec) – Ms. Mysliwiec directed the section to Attachment 3 of the September 12, 2025, meeting materials.

III Committee Reports

- A. Committee on Special Projects (Hilker): Mr. Hilker reported that the committee had a lengthy discussion on undue influence and proposed statutes led by the Undue Influence committee. There was also a discussion of the Nonbanking Entity Trust Powers committee.
- B. Amicus (Mayoras):
 - i. Mr. Mayoras reported that the amicus brief for the Fowler case was filed. The Supreme Court has not yet issued any opinion or orders. There are no new submissions.
- C. Annual Meeting (Piwowarski): No report.
- D. Awards (Spica): Mr. Spica reported that the Awards committee has a new chair, Katie Lynwood.
- E. Budget (Savage): No report.
- F. Bylaws (Lucas): No report.
- G. Charitable and Exempt Organizations (Wrock). Ms. Wrock reported that the committee is continuing its review and their next meeting is Thursday September, 24th at 10:00 am.
- H. Citizens Outreach (Goetsch): No report.
- I. Court Rules, Forms, and Proceedings (Davis): No report.
- J. Electronic Communications (Chalgian): No report.
- K. Ethics and Unauthorized Practice of Law (Mallory): Mr. Mallory referred to the ethical hypothetical in Attachment 4 of the September 12, 2025, meeting materials.
- L. Guardianship, Conservatorship, and End of Life (Glazier): No report.

- M. Legislation Development and Drafting (Mills/Tiplady): No report.
- N. Legislation Monitoring and Analysis (Shelton). No report.
- O. Legislative Testimony (Hilker): No report.
- P. Membership (Augustine): No report.
- Q. Nominating (Skidmore): No report.
- R. Planning (Piwowarski): Mr. Piwowarski reported that the officers will continue their meetings on the Monday following the council meetings during his term as chairperson.
- S. Probate Institute (Savage): Ms. Savage had an initial meeting with Jeff Kirkey and Lisa Gehrin from ICLE and there is a preliminary draft of the topics.
- T. Real Estate (Hentkowski): Ms. Hentkowski reported that the committee is almost done revising the uncapping statute.
- U. State Bar and Section Journals (Mysliwicz): Ms. Mysliwicz reported that she will be stepping down as editor of the journal and Rebecca Wrock will be the incoming editor. That change will take place for the Spring 2026 journal.
- V. Tax (Anderton): Mr. Anderton reported that One Big Beautiful Bill became One Big Beautiful Act.
- W. Assisted Reproductive Technology (Welber): No report.
- X. Electronic Wills (Cieslik): Ms. Cieslik reported that she has a draft of legislation that incorporates the protection mechanisms that she had previously discussed earlier this year.
- Y. Fiduciary Exception to the Attorney-Client Privilege (Krueger): No report.
- Z. Nonbanking Entity Trust Powers (Spica): Mr. Spica reported that the committee will be bringing back to council Michigan Trust Company Act that involves two separate acts, one having the same provisions regarding family trust companies that the Michigan Trust Company Act had, and another having the same provisions regarding small commercial trust companies that the Michigan Trust Company had had but in the process of separating the two.
- AA. Premarital Agreements (Savage): Ms. Savage reported that the committee is going to work with the Family Law Section to try to work on a compromise in addition to the lobbyist's support.
- BB. Uniform Community Property Disposition at Death Act (Spica): No report.

- CC. Undue Influence (Glazier): No report.
- DD. Uniform Fiduciary Income and Principal Act (Spica): Mr. Spica reported that the Unitrust Act, HB 4033, passed in the House 160 to 0 and now it will go on to the Senate.
- EE. Uniform Partition of Heirs Property Act (Spica): No report.
- FF. Various Issues Involving Death and Divorce (Borst/Blume): No report.
- GG. Elder law, disability, and rights liaison report (Hentkowski): No report.
- III. ULC liaison report (Spica): Mr. Spica directed the council to Attachment 5 of the September 12, 2025, meeting materials.
- IV. Good of the Order:

Chairperson Piwowarski lead a discussion regarding having virtual-only meetings for January and February as opposed to meeting in-person.
- V. Adjournment of Regular Meeting at 11:28 a.m.

Respectfully Submitted,
Christine Savage, Secretary

The next Council meeting will be held on Saturday, October 18, 2025.

ATTACHMENT 2

State Bar of Michigan
Parent Company : State Bar of Michigan : Sections
Sections Income Statement - Probate and Estate
Aug 2025

Financial Row	Amount (Aug 2025)	Amount YTD (Oct 2024 - Aug 2025)	Last FY YTD (Oct 2023 - Aug 2024)
Income			
42690 - Miscellaneous Revenue	\$0.00	\$0.00	\$650.00
40085 - Section Affiliate Dues	\$0.00	\$595.00	\$560.00
40080 - Section Dues	\$140.00	\$115,080.00	\$114,870.00
Total Income	\$140.00	\$115,675.00	\$116,080.00
Expenses			
67010 - Administrative Services	\$0.00	\$0.00	\$2,817.00
67015 - Amicus Brief	\$8,423.50	\$18,575.25	\$25,217.50
67020 - Annual Meeting	\$0.00	\$0.00	\$252.60
67065 - Community Support, Donations & Sponsorships	\$0.00	\$23,880.00	\$19,000.00
67115 - Legislative Consulting	\$6,000.00	\$33,000.00	\$33,000.00
62315 - Meetings	\$0.00	\$18,334.22	\$15,742.24
64055 - Miscellaneous	\$0.00	\$1,398.01	\$1,363.60
65460 - Newsletter/Publication	\$0.00	\$9,450.00	\$13,300.00
61200 - Travel	\$0.00	\$6,626.50	\$9,822.79
Total Expenses	\$14,423.50	\$111,263.98	\$120,515.73
Increase or Decrease in Net Position	(\$14,283.50)	\$4,411.02	(\$4,435.73)
Net Position, Beginning Of year	\$204,051.48	\$204,051.48	\$221,440.20
Net Position, End of Period	\$189,767.98	\$208,462.50	\$217,004.47

State Bar of Michigan
Parent Company : State Bar of Michigan : Sections
Probate&Estate Section Expense Detail Report
From Oct 2024 to Aug 2025

Account	Date	Type	Document Number	ACS Vendor Name	Description	Debit	Credit	Total Net Amount
60000 - Operating Expenses - Non-Labor						\$0.00	\$0.00	\$0.00
61200 - Travel						\$0.00	\$0.00	\$0.00
	10/15/2024	Journ al	JE7754	David Murkowski	10/4/2024 Meeting Travel	\$315.17		\$315.17
	10/15/2024	Journ al	JE7747	Andrea Neighbors	10/4/2024 Meeting Travel	\$334.33		\$334.33
	10/15/2024	Journ al	JE7762	Marguerite Munson Lentz	10/4/2024 Meeting Travel	\$311.15		\$311.15
	10/15/2024	Journ al	JE7756	Kathleen Cieslik	10/4/2024 Meeting Travel	\$267.87		\$267.87
	10/15/2024	Journ al	JE7758	Katie Lynwood	10/4/2024 Meeting Travel	\$209.67		\$209.67
	10/28/2024	Journ al	JE8015	Richard Mills	10-04-2024 Meeting Travel	\$266.13		\$266.13
	10/28/2024	Journ al	JE8012	Georgette David	10-04-2024 Meeting Travel	\$307.13		\$307.13
	10/28/2024	Journ al	JE8011	David Lucas	10-04-2024 Meeting Travel	\$295.07		\$295.07
	10/28/2024	Journ al	JE8016	Robert Brower	10-04-2024 Meeting Travel	\$302.83		\$302.83
	10/28/2024	Journ al	JE8014	Marlaine Teahan	10-04-2024 Meeting Travel	\$228.81		\$228.81
	10/28/2024	Journ al	JE8006	Andy Mayoras	10-04-2024 Meeting Travel	\$331.36		\$331.36
	11/19/2024	Journ al	JE8460	James Spica	10-04-2024 Meeting Travel	\$319.95		\$319.95
	11/25/2024	Journ al	JE8595	Patricia Davis	10-04-2024 Meeting Travel	\$750.63		\$750.63
	3/26/2025	Journ al	JE10452	Patricia Davis	03-13-2025 Meeting Travel	\$708.54		\$708.54
	6/4/2025	Journ al	JE11442	Patricia Davis	04-10-2025 meeting travel	\$716.38		\$716.38
	6/11/2025	Journ al	JE11482	Brianne Gidcumb	05-15-2025 meeting travel	\$500.00		\$500.00
	6/11/2025	Journ al	JE11492	Zenon Kwik	05-17-2025 Probate Law Meeting Travel	\$461.48		\$461.48
Total - 61200 - Travel						\$6,626.50	\$0.00	\$6,626.50
62315 - Meetings						\$0.00	\$0.00	\$0.00

Account	Date	Type	Document Number	ACS Vendor Name	Description	Debit	Credit	Total Net Amount
	10/1/2024	Journ al	JE7258	Katie Lynwood	U Club deposits 11/2024, 1/2025, & 9/2025	\$750.00		\$750.00
	10/15/2024	Journ al	JE7757	Katie Lynwood	10/4/2024 Meeting	\$9,801.24		\$9,801.24
	10/28/2024	Journ al	JE8007	Angela Hentkowski	09/2024 - 9/2025 Zoom	\$169.49		\$169.49
	11/19/2024	Journ al	JE8461	University Club of MSU	Probate Law Meeting 11-8-24	\$891.00		\$891.00
	2/11/2025	Journ al	JE9905	University Club of MSU	Probate Law Meeting12-13-2024	\$1,570.60		\$1,570.60
	2/11/2025	Journ al	JE9906	University Club of MSU	Probate Law Meeting 01-10-2025	\$891.60		\$891.60
	3/26/2025	Journ al	JE10450	University Club of MSU	Probate Law Meeting 2-14-2025	\$1,016.00		\$1,016.00
	3/26/2025	Journ al	JE10449	University Club of MSU	Probate Law Meeting 3-14-2025	\$1,141.00		\$1,141.00
	4/22/2025	Journ al	JE10813	University Club of MSU	Probate Law Meeting 04-11-2025	\$1,023.60		\$1,023.60
	6/10/2025	Journ al	JE11477	Angela Hentkowski	03-04-2025-04-03-2025 ZOOM	\$83.74		\$83.74
	6/24/2025	Journ al	JE11616	Angela Hentkowski	05-12-2025 Probate Law Travel	\$995.95		\$995.95
Total - 62315 - Meetings						\$18,334.22	\$0.00	\$18,334.22
64055 - Miscellaneous						\$0.00	\$0.00	\$0.00
	10/15/2024	Journ al	JE7747	Andrea Neighbors	10/4/2024 Meeting Travel	\$54.01		\$54.01
	3/31/2025	Journ al	JE10550		Oct 2024 - March 2025 2% CC Fee	\$1,344.00		\$1,344.00
Total - 64055 - Miscellaneous						\$1,398.01	\$0.00	\$1,398.01
65460 - Newsletter/Publication						\$0.00	\$0.00	\$0.00
	10/31/2024	Journ al	JE8101		10/2 Read the Summer Newsletter Now	\$100.00		\$100.00
	1/31/2025	Journ al	JE9724		1/27 Read the Winter Newsletter Now E Blast	\$100.00		\$100.00
	4/8/2025	Journ al	JE10660	ICLE	Probate Law Journal	\$4,500.00		\$4,500.00
	6/24/2025	Journ al	JE11620	ICLE	Probate Law Journal	\$4,650.00		\$4,650.00
	6/30/2025	Journ al	JE11705		6/6 Read the Spring Newsletter E Blast	\$100.00		\$100.00
Total - 65460 - Newsletter/Publication						\$9,450.00	\$0.00	\$9,450.00
67015 - Amicus Brief						\$0.00	\$0.00	\$0.00
	1/8/2025	Journ al	JE9398	Smith Haughey Rice & Roegge	10/2024-11/2024 Services Probate Law	\$10,151.75		\$10,151.75
	8/18/2025	Journ al	JE12293	Barron Rosenberg Mayoras & Mayoras P.C.	Fowler Appeal Amicus Brief 08-07 -2025	\$8,423.50		\$8,423.50
Total - 67015 - Amicus Brief						\$18,575.25	\$0.00	\$18,575.25
67065 - Community Support, Donations & Sponsorships						\$0.00	\$0.00	\$0.00

Account	Date	Type	Document Number	ACS Vendor Name	Description	Debit	Credit	Total Net Amount
	10/1/2024	Journ al	JE7301	ICLE	Experts Estate Planning 10-22-2024	\$5,500.00		\$5,500.00
	4/22/2025	Journ al	JE10798	ICLE	Probate Law May 2025 Estate Planning	\$17,000.00		\$17,000.00
	6/4/2025	Journ al	JE11439	ICLE	RA Unsung Hero Award 2025	\$1,380.00		\$1,380.00
Total - 67065 - Community Support, Donations & Sponsorships						\$23,880.00	\$0.00	\$23,880.00
67115 - Legislative Consulting						\$0.00	\$0.00	\$0.00
	10/1/2024	Journ al	JE7262	Public Affairs Associates	October 2024	\$3,000.00		\$3,000.00
	11/19/2024	Journ al	JE8459	Public Affairs Associates	November 2024	\$3,000.00		\$3,000.00
	12/2/2024	Journ al	JE8716	Public Affairs Associates	December 2024	\$3,000.00		\$3,000.00
	1/7/2025	Journ al	JE9367	Public Affairs Associates	January 2025	\$3,000.00		\$3,000.00
	2/10/2025	Journ al	JE9895	Public Affairs Associates	February 2025	\$3,000.00		\$3,000.00
	3/26/2025	Journ al	JE10455	Public Affairs Associates	March 2025	\$3,000.00		\$3,000.00
	4/1/2025	Journ al	JE10538	Public Affairs Associates	April 2025	\$3,000.00		\$3,000.00
	5/1/2025	Journ al	JE10912	Public Affairs Associates	May 2025	\$3,000.00		\$3,000.00
	6/4/2025	Journ al	JE11445	Public Affairs Associates	June 2025	\$3,000.00		\$3,000.00
	8/18/2025	Journ al	JE12276	Public Affairs Associates	August 2025	\$3,000.00		\$3,000.00
	8/18/2025	Journ al	JE12275	Public Affairs Associates	July 2025	\$3,000.00		\$3,000.00
Total - 67115 - Legislative Consulting						\$33,000.00	\$0.00	\$33,000.00
Total - 60000 - Operating Expenses - Non-Labor						\$111,263.98	\$0.00	\$111,263.98

ATTACHMENT 3

M E M O R A N D U M

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan
Ethics & Unauthorized Practice of Law Committee

From: James P. Spica

Re: Ethical Hypothetical for June 13, 2025 Council Meeting

Date: August 30, 2025

I. MOOTED FACTS

Clients are Michigan residents who “need to restate/amend their trust,”¹ which they “formed . . . pursuant to Ohio law to be subject to Ohio law”² at a time when they resided in Ohio.

II. QUESTION PRESENTED

“As a Michigan lawyer not licensed [to practice] in the [S]tate of Ohio, [can] I [without engaging in unauthorized practice of law³ or breaching my duty to provide competent representation,⁴ prepare a] restate[ment] or amend[ment] of [the terms of Clients’] trust [that changes the governing law] to [that of] Michigan . . . [even] if the [original] trust [instrument] only provides that [the trust can] be amended or revoked by the grantor[s], with no additional language about amendments and revocation?”⁵

III. SHORT ANSWER

Yes: on plausible, alternative interpretations of the mooted facts,⁶ I can, without engaging in unauthorized practice of law or breaching my duty of competence, prepare a restatement or amendment of the terms of the trust about which Clients have consulted me (*T*) that designates Michigan law to govern the validity, construction, and administration⁷ of the result. And I can do

¹ Memorandum from Ethics & Unauthorized Prac. of L. Comm. to the Council of the Prob. & Est. Plan. Section of the State Bar of Mich. (June 13, 2025) (June 2025 Council Meeting Materials at 43) [hereinafter Committee Memorandum].

² *Id.*

³ Within the meaning of Model Rules of Pro. Conduct r. 5.5 (Am. Bar Ass’n 2005).

⁴ Within the meaning of *id.* r. 1.1. “Even though authorized by MRPC 5.5 to provide services in a non-admitted jurisdiction, the lawyer remains subject to all other ethical provisions of the MRPC. In particular, pursuant to MRPC 1.1 (Competence), the lawyer must provide competent representation regarding the laws and rules applicable in the non-admitted jurisdiction.” Am. Coll. of Tr. & Est. Couns., *ACTEC Commentaries on the Model Rules of Professional Conduct* 211 (6th ed. 2023) [hereinafter *ACTEC Commentaries*].

⁵ Committee Memorandum.

⁶ Specified *infra* Part IV.

⁷ Common law choice-of-law analysis assumes that every legal question concerning an express trust is allocable to (at least) one of these three categories. *See* Restatement (Second) of Conflict of Laws ch. 10, topic 1, intro. note (Am. L. Inst. 1971). As to a given trust, all three categories may be governed by the law of the same state or each by the law of a different state and they may change, together or severally, over time. *See, e.g.,* *Wilmington Tr. v. Wilmington Tr.*, 24 A.2d 309, 314 (Del. 1942) (finding settlor of express trust created in New York intended change of law governing administration to effect change of law governing construction).

that, on both interpretations, without consulting Ohio counsel.

IV. ALTERNATIVE INTERPRETATIONS OF THE MOOTED FACTS

A. Common Assumptions

Of course, someone could set out to “restate” the terms of a trust without having any intention of amending those terms, as when, for example, translating a trust instrument from one language to another, or petitioning a court to declare the terms of a trust because the trust instrument is lost. But the Committee’s casual linkage of the verbs “restate” and “amend” in the expression “need to restate/amend . . .” suggests alternative means rather than alternative ends—it suggests that Clients may have a couple of different ways of dealing with a particular problem rather than that they may have a couple of different problems. We will assume, therefore, that Clients’ interest in the possibility of *restating* the terms of *T* is as a particular means of *amending* at least some of those terms: the choice between restatement and amendment, as they conceive it, concerns merely the *extent* of the document I prepare for them and the number of operative trust instruments left standing after that document is executed.

The Committee hasn’t said whether I communicate with Clients regarding *T* when Clients and I are physically located in Ohio, when I am physically located in Michigan and Clients in Ohio, or when we are all physically located in Michigan. As to this, we will assume only that Clients’ residence in Michigan makes it possible for us (Clients and me) (1) to make the latter situation (in which I communicate with Clients regarding *T* when they and I are physically located in Michigan) the norm and any instance of either of the other two situations strictly “temporary” within the meaning of rule 5.5(c) of the Model Rules of Professional Conduct (MRPC)⁸ and (2) to arrange for Clients to execute any documents I prepare for them (regardless of where I prepare the documents) in Michigan.

The Committee also hasn’t adduced any difference between the rules of professional responsibility (concerning unauthorized practice of law, competence, or anything else) applicable to lawyers admitted in Ohio, on the one hand, and those applicable to lawyers admitted in Michigan, on the other. Without such a difference, it isn’t “necessary to have a choice-of-law rule to determine which specific provision of two . . . arguably applicable *and inconsistent* lawyer-code provisions should apply.”⁹ We will therefore assume that the question presented by the Committee does not involve a choice of law concerning *professional discipline*.¹⁰ We will also suppose (1) that the ground for saying that Clients “formed [*T*] to be subject to Ohio law”¹¹ is that a provision of the *T* trust instrument explicitly designates Ohio law to govern *T*’s validity and construction,¹² (2) that the *T* trust instrument was executed on or after January 1, 2007,¹³ and

⁸ “A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services *on a temporary basis* in this jurisdiction that . . .” Model Rules of Professional Conduct r. 5.5(c) (Am. Bar Ass’n 2005) (emphasis added).

⁹ Restatement (Third) of the L. Governing Lawyers § 5 cmt. h (Am. L. Inst. 2000) (emphasis added).

¹⁰ “In general, traditional choice-of-law principles, such as those set out in the Restatement Second of Conflict of Laws, have governed questions of choice of law in *nondisciplinary* litigation involving lawyers.” *Id.* § 1 cmt. e (emphasis added).

¹¹ See *supra* note 2 and accompanying text.

¹² See *supra* note 7.

¹³ January 1, 2007 being the effective date of Ohio’s enactment of the Uniform Trust Code (UTC). See Ohio Rev. Code Ann. § 5806.02(A) (being Ohio’s version of Unif. Tr. Code § 602(a) (Unif. L. Comm’n 2010)) (“Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This division does not apply to a trust created under an instrument executed before January 1, 2007.”).

(3) that I've informed Clients that I am not licensed to practice law in Ohio.¹⁴

B. Alternative Interpretation 1

We don't know *why* Clients "need to restate/amend [the terms of *T*]" and change governing law.¹⁵ Is it because they are now (or are expecting soon to be) *domiciliaries*¹⁶ as well as residents of Michigan¹⁷ and suppose that domiciliary status requires (or is conveniently evidenced by) trust naturalization? Or is it because, though they are now (and expect to remain) domiciliaries of Ohio,¹⁸ they ultimately want *T* to be administered in (and otherwise subject to the local law¹⁹ of) Michigan because (for example) of the current or expected future locations of the intended beneficiaries, trustee(s), and trust asset(s)?²⁰ As stated, these candidate explanations are mutually exclusive, but we can embrace aspects of both—and build the neatest possible interpretation from my point of view as Clients' Michigan counsel—if we assume that Clients have no present intention or concern that would foreseeably require *T* ever to be recognized as an express trust by an Ohio court: on this "Interpretation 1" (let us say), Clients have moved "lock, stock, and barrel" (as the gunnery figure has it) to Michigan with the intention of dwelling, indefinitely, in the suburb of Detroit in which (for the nonce at least) all of the intended objects of Clients' bounty happen to reside.

We can add signally to Interpretation 1's *neatness*—again, from my point of view as Clients' Michigan counsel—by also assuming (1) that Clients are, and have been since *T*'s inception the trustees of *T* and (2) that in light of Clients' motivation (whatever it is exactly) for giving *T* a Michigan orientation, (a) the trouble of protectively retitling or redirecting any assets that Clients are *aware* of having titled or directed to themselves as trustees of *T* and of executing

¹⁴ "Under MRPC 5.5, a lawyer engaged in a multijurisdiction practice necessarily offers limited services in jurisdictions in which the lawyer is not admitted to practice law [and may, therefore,] need to obtain the client's informed consent to do so." *ACTEC Commentaries*, *supra* note 4, at 211 (citing MRPC rule 1.2(c)).

¹⁵ See *supra* Parts I–II.

¹⁶ I take it that by now, lawyers have sufficiently *nouned* the adjective 'domiciliary' for *me* to join in. See, e.g., Bryan A. Garner, *A Dictionary of Modern Legal Usage* 196b (1987) ("[D]omiciliary is both adjective ('of or pertaining to domicile') and noun ('one belonging to a domicile')."). (There is no evidence of the latter use in, for example, *The Shorter Oxford English Dictionary on Historical Principles* 593c (C.T. Onions ed., 3d ed. with rev. etymologies & addenda 1973) (being entry for "domiciliary").)

¹⁷ Assuming that Clients were previously domiciliaries of Ohio, the supposition that they are now domiciliaries of Michigan would involve that as far as the state of the forum is concerned, Clients (1) have capacity to acquire a "domicil of choice," Restatement (Second) of Conflict of Laws § 11 cmt. a (Am. L. Inst. 1971), and (2) have made (or intend to make) Michigan "the center of [their] domestic, social and civil life," *id.* § 12 (defining "home"). See *id.* § 13 ("In applying its rules of Conflict of Laws, the forum determines domicile according to its own standards.").

¹⁸ "In principle one can be *resident* in two [states] at once, but to avoid the inadmissible result of . . . two domiciles of choice, . . . the residence requirement [for domicile] identifies the principal residence if there is more than one contender." Adrian Briggs, *The Conflict of Laws* 25 (2d ed. 2008) (emphasis added); accord Restatement (Second) of Conflict of Laws § 20.

¹⁹ The "local law" of a given state is that state's *domestic* or *intestate* law, that is, the state's law *excluding* conflict of laws rules. See Restatement (Second) of Conflict of Laws § 4(1); see also *id.* § 222 cmt. e; *id.* ch. 9, topic 2, intro. note. A state's conflict of laws rules comprise (1) rules concerning jurisdiction over matters involving what are, in respect of the *lex fori*, *foreign* elements, (2) rules concerning recognition of foreign judgments, and (3) choice-of-law rules. See Restatement (Second) of Conflict of Laws § 2 cmt. a; Briggs, *supra* note 18, at 1.

²⁰ These are contacts (or "connecting factors," see *infra* note 82) relevant to the determination of whether a state has a significant relation to a trust and, perhaps, even the most significant relation to the trust as to the matter at issue for choice-of-law purposes at common law. See, e.g., Restatement (Second) of Conflict of Laws § 270 cmt. b–c.

one-sentence codicils republishing their respective pour-over wills is “worth the candle” (as the lucubratory figure has it) and (b) I can recommend—and Clients are willing—that the terms of *T* be *restated* in full.²¹

But the statement that “Clients . . . need to restate/amend [the terms of *T*]”²² is logically as well as factually ambiguous. It may mean that to achieve a certain set of their objectives (on a given understanding of the surrounding circumstances), Clients *should* (i.e., *are well advised* to) restate or amend the terms of *T* (Sense 1). Alternatively, it may mean that to achieve a certain set of their objectives (on a given understanding . . .), Clients *understandably wish* to restate or amend the terms of *T* (Sense 2). As used in Sense 1, the predicate “need(s) to . . .” is appropriate only when there is no question of the subject’s or subjects’ not being able to do what is “need[ed],” as when I say (of a sober person who is in good health), “He needs to sit up straight.” As used in Sense 2, “need(s) to . . .” is at least *consistent with* and, indeed, may *imply* that the subject’s(s’) ability to do what is “need[ed]” is doubtful, as when I say (even of a sober person who is in good health), “He’ll need to jump twenty-seven inches vertically.”

If we take “Clients . . . need to restate/amend [the terms of *T*]” in Sense 1, it is simply *given* that the trust described in the *T* trust instrument, viz., *T*, was validly created and is currently revocable; for in Sense 1, “need(s) to . . .” implies “*can* . . .,” and Clients cannot restate or amend a trust that is either nonexistent or irrevocable.²³ We can imagine, for example, that Clients have a recent letter (dated *after* the execution of the *T* trust instrument) from a lawyer licensed to practice in Ohio (who happens to be the current Chair of the Estate Planning, Trust, and Probate Law Section of the Ohio State Bar Association) that clearly states that *T* is a valid, *revocable* trust under Ohio law.

C. Alternative Interpretation 2

If, on the other hand, we take “Clients . . . need to restate/amend [the terms of *T*]” in Sense 2, the questions whether *T* is valid and, if so, *revocable* may be open; for in Sense 2, “need(s) to . . .” needn’t imply “*can* . . .”²⁴ In that case, Clients *do not* have any communication from Ohio counsel like the letter involved in Interpretation 1;²⁵ perhaps they avow that they “just always *assumed*” that *T* was revocable in light of the declaration to that effect in the trust instrument²⁶ and that *T* was valid in light the considerable fee they paid Ohio counsel to help them create the thing. We will assume that *T* would be a valid, revocable trust if Michigan law governed the meaning and effect of *T*’s terms from inception, but I won’t be able to use *Michigan* law to determine *directly* even that *T* was “validly created”²⁷ if we also assume (as we will on this “Interpretation 2”) that the *T* trust instrument was executed somewhere outside of Michigan at a time when (1) Clients (and any trustee of *T* other than Clients)²⁸ had neither a residence nor a place of business in Michigan and (2) there was no property subject to the terms

²¹ As opposed to *amended* in part. See *supra* note 1 and accompanying text; see also *supra* Section IV.A.

²² See *supra* note 1 and accompanying text.

²³ See, e.g., Unif. Tr. Code § 602(c) (Unif. L. Comm’n 2010) (describing methods by which “[t]he settlor may revoke or amend a *revocable* trust” (emphasis added)). Cf. *id.* § 411 (describing methods by which “[a] noncharitable irrevocable trust may be *modified or terminated*” (emphasis added)).

²⁴ See *supra* Section IV.B.

²⁵ See *supra* Section IV.B.

²⁶ See *supra* note 5 and accompanying text.

²⁷ Mich. Comp. Laws § 700.7403 (being Unif. Tr. Code § 403) (quoted *infra* note 29).

²⁸ We needn’t assume in *this* interpretation that Clients are trustees of *T*. Cf. *supra* Section IV.B.

of *T* located in Michigan.²⁹ We can further complicate things—from my point of view as Clients’ Michigan counsel—by assuming that Clients reasonably regard the trouble of protectively retitling or redirecting the assets titled or directed to the trustees of *T* as practically prohibitive (assuming *T* is valid and revocable).³⁰ And to otherwise make Interpretation 2 *messy* where Interpretation 1 is “neat[],”³¹ we can assume that though Clients’ motivation (whatever it is exactly) for giving *T* a Michigan orientation is sufficiently compelling,³² it leaves open distinct possibilities that an Ohio court could one day be asked to acknowledge or repudiate the terms of *T* as amended.

V. ANALYSIS OF INTERPRETATION 1

Interpretation 1 is liable to deprive the mooted facts of their unauthorized-practice-or-competence interest by making *effective amendment of the terms of T under Ohio law* all but indifferent. Clients are reliably informed (on this interpretation)—by someone *other than me*—that *T* is a valid, revocable trust under Ohio law, but they currently have no reason to expect that it will ever be more important for *T* to be recognized as such by a court *in Ohio* than by a court in any other state that is not Michigan; and they are willing to republish their pour-over wills and protectively retitle or redirect assets that they’re *aware* of having titled or directed to themselves as trustees of *T*.³³ That means that Clients’ objectives (whatever they are exactly) in “restat[ing]/amend[ing] [the terms of *T*]” can all but handily be met by my simply creating a new, *T-substitute* revocable trust for them that is valid under Michigan law and that designates Michigan law to govern the new trust’s validity, construction, and administration.³⁴ The only *T*-related risk to which that tack leaves Clients exposed is that there may be assets titled or directed to the trustee(s) of *T* of which Clients are unaware—either because they’ve forgotten something or because, without Clients’ knowledge, assets have been (or later will be) contributed to *T* by someone other than Clients.

If Clients reasonably regard that risk as negligible, I can afford to be agnostic about whether the restatement I prepare³⁵ will be valid *qua amendment of the terms of the existing trust T under Ohio law* so long as the restatement alternatively creates a valid revocable trust under the law of Michigan. And happily (as we shall see shortly), the fact that the restatement might (for preference) amend the terms of a revocable trust (viz., *T*) created pursuant to Ohio law that designates Ohio to provide “governing” law does not prejudice the question whether the restatement might *alternatively* create a contingently independent revocable trust pursuant to Michigan law.

²⁹ See Mich. Comp. Laws § 700.7403 (“A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of a jurisdiction [in] which, at the time of creation . . . [t]he settlor was domiciled [or] had a place of abode . . . , [a] trustee was domiciled or had a place of business . . . [or] [a]ny trust property was located.”).

³⁰ This might be due either to the number *or to the nature* of trust assets: retitling shares in a closely held, federally chartered, regional bank, for example, could involve the trustee(s) in negotiations with organs of the Federal Reserve System. See, e.g., 12 U.S.C. § 1841(b) (defining “company” for purposes of Bank Holding Company Act to include certain express trusts).

³¹ See *supra* Section IV.B.

³² In the sense that Clients have good reason to seek the advice of someone knowledgeable about the law of Michigan in particular. See *supra* text accompanying notes 15–20.

³³ See *supra* Section IV.B.

³⁴ See *supra* note 7 and accompanying text.

³⁵ See *supra* text accompanying note 21.

A. Ohio Law Governs the Validity of An Initial Amendment of the Existing Trust *T*

As far as a UTC state like Michigan or Ohio is concerned, the validity of the restatement I prepare for Clients *as an amendment of the terms of the existing trust T* is a question (as between Michigan and Ohio at least) of Ohio law; for (1) the *T* trust instrument explicitly designates Ohio law to govern *T*'s validity and construction³⁶ and (2) UTC section 107(1) provides that

[t]he meaning and effect of the terms of a trust are determined by . . . the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue.³⁷

Now, it is possible that Michigan is “the jurisdiction having the most significant relationship to the matter”³⁸ of the validity of the restatement *qua* amendment of the terms of *T*.³⁹ But it is *not* possible that the *T* trust instrument's designation of Ohio law is “contrary to a strong public policy of [Michigan regarding that] matter”⁴⁰ because Ohio has enacted the same UTC provision regarding amendment of revocable trusts, as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC: “The settlor may revoke or amend a revocable trust . . . if the terms of the trust do not provide a method, by any method manifesting clear and convincing evidence of the settlor's intent”⁴¹ And both states have enacted similar exhortations (of their respective judiciaries) to multistate uniformity in

³⁶ See *supra* text accompanying note 12.

³⁷ Unif. Tr. Code § 107(1) (Unif. L. Comm'n 2010). See Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107). See also *In re Ringer Estate*, 2018 Mich. App. LEXIS 3741, at *5–6 (Mich. Ct. App. Dec. 20, 2018) (citing Mich. Comp. Laws § 700.7107(a) as authority for applying Illinois law to determine validity of disclaimer of interest in testamentary trust created under Illinois will); Restatement (Second) of Conflict of Laws § 6(1) (Am. L. Inst. 1971) (“A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.”).

³⁸ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A).

³⁹ Owing, perhaps, to Clients' motivation (whatever it is exactly) for giving *T* a Michigan orientation. See *supra* text accompanying notes 15–20. This might be especially likely to the extent Clients, *qua* trustees of *T*, own directly (i.e., without an entity wrapper) land located in Michigan; for though the legislative history (see *infra* note 85 and accompanying text) of UTC section 107 indicates that “[t]he settlor is free to select the governing law regardless of . . . whether [the trust property] consists of real or personal property,” Unif. Tr. Code § 107 cmt. (emphasis added), deference to the law of the situs of land is a pervasive feature of common law choice-of-law rules, see, e.g., Restatement (Second) of Conflict of Laws § 281 (indicating that validity of exercise of trust-spawned power to appoint land is determined by the law that would be applied by courts of the situs); see generally *id.* ch. 10, topic 1, intro. note. And Michigan courts (at least) employ the interpretive presumption that a minimum change is to be effected by legislation in a common law area. See *Nation v. W.D.E. Elec. Co.*, 563 N.W.2d 233, 236 (Mich. 1997) (“[S]tatutes in derogation of the common law . . . will not be extended by implication to abrogate established rules of common law.”).

⁴⁰ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A).

⁴¹ Ohio Rev. Code Ann. § 5806.02(C) (being Ohio's version of Unif. Tr. Code § 602(c)). See Mich. Comp. Laws § 700.7602(3) (being Michigan's version of Unif. Tr. Code § 602(c)) (“The settlor may revoke or amend a revocable trust . . . [i]f the terms of the trust do not provide a method . . . [and] [i]f the trust is created pursuant to a writing, by another writing manifesting clear and convincing evidence of the settlor's intent to revoke or amend the trust.”). (The quotation that this note tags and the one that this note *contains* both omit language concerning the possibility that the terms of the trust “provide a method [of amendment]” because the Committee has assumed that the *T* trust instrument “provides that [the trust can] be amended or revoked by the grantor[s], with no additional language about amendments and revocation.” Committee Memorandum; see *supra* Part II.)

interpretation of UTC provisions.⁴² There can't be contrariety without difference.⁴³ So, as far as Michigan's public policy is concerned, the "unless . . ." condition of UTC section 107(1)⁴⁴ is inapplicable in this case, and (as between Michigan and Ohio at least) Ohio law therefore governs the validity of the restatement I prepare *qua* amendment of the terms of the existing trust *T*.⁴⁵

B. But Michigan Law Governs the Alternative Creation of a *T*-Substitute Revocable Trust

But though the "restatement" I prepare for Clients is intended—for preference, just in case there *are*, after all, *T* trust assets of which Clients are unaware—to amend the terms of the existing trust *T* (which trust was created pursuant to Ohio law and designates Ohio to provide "governing" law), *if* the restatement should come to be examined⁴⁶ for its capacity *alternatively* to create an independent trust of the same description as *T* as "*restated*," there is no ordering principle of choice of law according to which the validity of the creation of the putatively independent trust must be determined under Ohio law.⁴⁷ And there is, of course, no reason why a dispositive instrument can't condition alternative means of effecting a given disposition on alternative contingencies.⁴⁸

1. UTC section 403

Michigan Trust Code (MTC) section 7403 provides: "A trust not created by will is validly created if its creation complies with [among alternative, potential validating references] the law of *the jurisdiction in which the trust instrument was executed*."⁴⁹ And by hypothesis, Clients can execute the restatement I prepare for them (presumably in Michigan) in Michigan.⁵⁰ Since I can make sure that the restatement describes a trust that complies with Michigan's

⁴² See Ohio Rev. Code Ann. § 5811.01 ("In applying and construing Chapters 5801. to 5811. of the Revised Code, a court may consider the need to promote uniformity of the law with respect to the subject matter of those chapters among states that enact the uniform trust code."); Mich. Comp. Laws § 700.1201(d) ("This act [including *id.* § 700.7602] shall be liberally construed and applied to . . . make the law uniform among the various jurisdictions, both within and outside of this state."). See also Unif. Tr. Code § 1101 ("In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.").

⁴³ Difference (between potentially applicable local laws) is *necessary* to trigger UTC section 107(1)'s "strong public policy" override but, of course, it isn't sufficient: "obviously the mere fact that foreign and domestic law differ on some point is not *enough* to invoke the exception. Otherwise in every case of an actual conflict the court of the forum state would choose its own law; there would be no law of conflict of laws." *Spinozzi v. ITT Sheraton Corp.*, 174 F.3d 842, 847 (7th Cir. 1999) (Posner, C.J.) (emphasis added) (interpreting common law public-policy override of settlor autonomy in choice of law).

⁴⁴ See *supra* note 37 and accompanying text.

⁴⁵ See Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1), quoted *supra* text accompanying note 37).

⁴⁶ Owing, say, to the omission of some formality that is not required under the local law of Michigan but (unknown to Clients and me) *is* required under that of Ohio.

⁴⁷ As is argued *infra* Sections V.B.1–2.

⁴⁸ Think, for example, of the formerly standard provision in "pour-over" wills that disposed of the residue (for preference) to the trustee(s) of the testator or testatrix's revocable trust but then incorporated the terms of that trust (as they existed as of the date of the will) in case it should turn out for any reason that the trust was not in existence on the date of the testator or testatrix's death.

⁴⁹ Mich. Comp. Laws § 700.7403 (emphasis added) (being Unif. Tr. Code § 403) (quoted at length *supra* note 29). See also Ohio Rev. Code Ann. § 5804.03 (being Unif. Tr. Code § 403).

⁵⁰ See *supra* Section IV.A.

requirements for the creation of a revocable trust,⁵¹ the contemplated restatement of *T* that designates Michigan to provide governing law⁵² will describe a revocable trust that may be “validly created,” according to Michigan law, as of the date of the restatement, *regardless* of whether the restatement does or does not constitute a valid amendment of the terms of the existing trust *T* under Ohio law.⁵³

Clients’ willingness to republish their pour-over wills and protectively retitle or redirect *T* trust assets they’re *aware* of will do the rest⁵⁴ in conjunction with (something like) the following provision of the restatement.

Settlors provisionally intend that this Restatement will amend and state anew the complete terms of the revocable trust that they created on [date of execution of *T* trust instrument] (“Date 1”) pursuant to Ohio law (“Original Trust”). They expect that that intention (“Provisional Intention”) will be realized based on their understanding (1) that this Restatement would constitute a valid amendment of the Original Trust if its validity as such were determined under Michigan law, by virtue of its compliance with a particular provision of the Uniform Trust Code (“UTC”) that has been enacted in Michigan⁵⁵ as part of Michigan’s general enactment of the UTC and (2) that the same UTC provision has likewise been enacted in Ohio.⁵⁶ This Restatement also complies, however, independently, with the requirements under Michigan law for the *creation*, as of the date hereof (“Date 2”), of the trust described herein.⁵⁷ In accordance with the Provisional Intention, the trust described herein shall be known, in any case, as “Clients’ Trust dated Date 1.” But Clients do not intend that the efficacy of this Restatement in achieving the dispositive and administrative purposes that it expresses shall be limited—by the Provisional Intention—to whatever validity it may have under Ohio law *as an amendment of the Original Trust*. Therefore, to the extent, if any, that this Restatement does not cause any asset currently held by Clients as trustees of the Original Trust to become subject to the provisions of this Restatement (as opposed to those of the Original Trust instrument), Clients hereby revoke the Original Trust and transfer the asset in question to themselves as trustees of Clients’ Trust dated Date 1 as the trust that is, *in that case*, separately created on Date 2 by this Restatement pursuant to Michigan law.

⁵¹ Viz., Mich. Comp. Laws §§ 700.7105(2)(a), .7401, .7402, .7602(1).

⁵² See *supra* text accompanying note 7.

⁵³ See Mich. Comp. Laws § 700.7403 (quoted in part *supra* text accompanying note 49 and at length *supra* note 29).

⁵⁴ See *supra* text accompanying note 33–35.

⁵⁵ A note for my file will indicate that Clients refer here to Mich. Comp. Laws § 700.7602(3)(b) (being Michigan’s version of Unif. Tr. Code § 602(c)(2) (Unif. L. Comm’n 2010)).

⁵⁶ A note for my file will indicate that Clients refer here to Ohio Rev. Code Ann. § 5806.02(C) (being Ohio’s version of Unif. Tr. Code § 602(c)(2)).

⁵⁷ A note for my file will indicate that Clients refer here to Mich. Comp. Laws §§ 700.7401, .7402. See *supra* note 51 and accompanying text.

2. A Dismissible Objection

It might be objected that the “catchline”⁵⁸ of Michigan’s enactment of UTC section 403, which reads, “Trusts created in *other* jurisdictions,”⁵⁹ restricts MTC section 7403’s application to trusts created in states *other than* Michigan, whereas (1) the plan is for Clients to execute the restatement I prepare for them (presumably in Michigan) *in Michigan*⁶⁰ and (2) according to the argument above, it is the validity of the creation, not of *T*, but of the contingently separate *T-substitute trust*, originating pursuant to Michigan law, on Date 2,⁶¹ that MTC section 7403 is supposed to confirm.

The response to this objection is that catchlines are not included in legislative bills in Michigan⁶² (they are supplied by the Legislative Service Bureau (LSB) *after* enactment),⁶³ and generally “[h]eadings and titles may not be used in construing a statute . . . unless they are contained in the [enrolled bill] . . . as adopted.”⁶⁴ Furthermore, *this* catchline is just (verbatim) the heading that accompanies section 403 in the uniform act,⁶⁵ while there is nothing in the text of, or the official Comment to UTC section 403 to prevent or discourage the section’s application to trusts created in the enacting state,⁶⁶ and the Comment tells us that “[s]ection 403 is comparable to Section 2-506 of the Uniform Probate Code, which validates wills executed in compliance with the law of a variety of places,”⁶⁷ *including, explicitly, the law of the enacting state*.⁶⁸ So, the heading parroted by the LSB catchline⁶⁹ is simply a misnomer—one eschewed, by the way, in Ohio in favor of, “Validity of nontestamentary trusts.”⁷⁰ The catchline should thus be ignored, and, thanks to MTC section 7403, the restatement I prepare for Clients will succeed *at least*⁷¹ as the creation of a substitute revocable trust (having the terms of *T* as “restated”) to which Clients transfer the assets of *T* of which they are aware.⁷²

C. Change to, or Designation of Michigan for Governing Law

⁵⁸ Within the meaning of the Legislative Council Act, 1986 Mich. Pub. Acts 268. *See, e.g.*, Mich. Comp. Laws § 4.1108(d) (“The [legislative service] bureau shall . . . [p]repare catchlines, indexes, and tables for the public and local acts of each session of the legislature.”).

⁵⁹ Mich. Comp. Laws § 700.7403 (emphasis added) (being Unif. Tr. Code § 403 and bearing catchline quoted in text).

⁶⁰ *See supra* note 50 and accompanying text.

⁶¹ *If* and to the extent that the restatement I prepare for Clients does not constitute a valid amendment of the terms of the existing trust *T* under Ohio law. *See supra* Section V.B.1.

⁶² This feature of the legislative process in Michigan is not universal: “Headings are not voted upon by Parliament, *but they are included in the Bill* and form part of the text entered on the Parliament Roll.” Rupert Cross, *Statutory Interpretation* 131 (John Bell & George Engle eds., 3d ed. 1995) (emphasis added).

⁶³ *See* Mich. Comp. Laws § 4.1108(d) (quoted *supra* note 58).

⁶⁴ Unif. Statute & Rule Constr. Act § 13 (Unif. L. Comm’n 1995).

⁶⁵ *See* Unif. Tr. Code § 403 (Unif. L. Comm’n 2010) (bearing heading, “Trusts created in other jurisdictions”). *Cf. supra* text accompanying note 59.

⁶⁶ *See* Unif. Tr. Code § 403; *id.* cmt.

⁶⁷ *See id.* cmt.

⁶⁸ *See* Unif. Prob. Code § 2-506 (Unif. L. Comm’n 2010) (“A written will is valid if executed in compliance with *Section 2-502 or 2-503* or if its execution complies with the law at the time of execution of the place where the will is executed . . .” (emphasis added)).

⁶⁹ *See supra* text accompanying notes 59, 65.

⁷⁰ *See* Ohio Rev. Code Ann. § 5804.03 (being Unif. Tr. Code § 403) (bearing heading quoted in text).

⁷¹ *If* the restatement I prepare does not constitute a valid amendment of the terms of the existing trust *T* under Ohio law. *See supra* Section V.B.1.

⁷² *See supra* Section V.B.1.

1. Administration

Whether the restatement I prepare succeeds as an amendment of the terms of *T* (because it happens to comply with the requirements for that sort of thing under Ohio Law)⁷³ or merely as the creation of a new revocable trust *substitute* for *T*⁷⁴ (because the restatement complies with the requirements for *that* sort of thing under *Michigan* law),⁷⁵ the fact that the trustees of *T* (Clients)⁷⁶ are Michigan residents⁷⁷ is “a sufficient connection”⁷⁸ with Michigan for the restatement’s designation of Michigan (or a *place* in Michigan) as the trust’s “principal place of administration” within the meaning of UTC section 108⁷⁹ to determine judicial jurisdiction⁸⁰ and that the local law of Michigan will govern the trust’s administration.⁸¹

2. Validity and Construction

And whether the restatement I prepare succeeds as an amendment of the terms of *T* or merely as the creation of a new revocable trust *substitute*, there are neither too many contacts⁸² with Ohio nor too few with Michigan for the restatement to *designate* Michigan to provide law governing validity and construction.⁸³ That is because according to the legislative history of UTC section 107(1),⁸⁴ viz., the Uniform Law Commission (ULC) Comment to the section,⁸⁵

⁷³ See *supra* Section V.A.

⁷⁴ See *supra* note 72 and accompanying text.

⁷⁵ See *supra* Section V.B.1.

⁷⁶ See *supra* text accompanying notes 20–21.

⁷⁷ See *supra* text accompanying note 1.

⁷⁸ Unif. Tr. Code § 108(a) (Unif. L. Comm’n 2010) (“Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration . . .”); see Mich. Comp. Laws § 700.7108(1) (being Michigan’s version of Unif. Tr. Code § 108(a)); Ohio Rev. Code Ann. § 5801.07(A) (being Unif. Tr. Code § 108(a)).

⁷⁹ Unif. Tr. Code § 108(a) (“[T]erms of a trust designating the principal place of administration are . . . controlling if a trustee’s principal place of business is located in or a trustee is a resident of the designated jurisdiction or . . . all or part of the administration occurs in the designated jurisdiction.”).

⁸⁰ “Under the Uniform Trust Code, the fixing of a trust’s principal place of administration will determine where the trustee and beneficiaries have consented to suit It may also be considered by a court in another jurisdiction in determining whether it has jurisdiction.” *Id.* § 108 cmt. (As to the relevance of the cited Comment to Michigan or Ohio’s enactment of UTC section 108, see *infra* note 85.)

⁸¹ “[T]ransfer of the principal place of administration will normally change the governing law with respect to administrative matters.” Unif. Tr. Code § 108 cmt. If the restatement I prepare constitutes a valid amendment of the terms of *T* under Ohio law, the fact that the “the rights of the beneficiaries are [currently] subject to the control of [Clients as] settlor[s], and the duties of the trustee[s], including the duties to inform and report . . . are owed exclusively to [Clients as] settlor[s],” Ohio Rev. Code Ann. § 5806.03(A) (being Ohio’s version of Unif. Tr. Code § 603(b)), presumably dispenses with the need for the notice to beneficiaries that would otherwise be required under Ohio’s version of UTC section 108(d). See Ohio Rev. Code Ann. § 5801.07(D) (being Ohio’s version of Unif. Tr. Code § 108(d) (“The trustee shall notify the current beneficiaries of a proposed transfer of a trust’s principal place of administration not less than sixty days before initiating the transfer.”)).

⁸² I.e., “connecting factors,” “[p]oints of contact [that] connect an individual or an event to a system of . . . law.” Briggs, *supra* note 18, at 20.

⁸³ See *supra* text accompanying notes 5, 7.

⁸⁴ I.e., the legislative history of the UTC section that is quoted *supra* text accompanying note 37.

⁸⁵ “[T]he Comments to any Uniform Act, may be relied on as a guide for interpretation.” Unif. Tr. Code § 106 cmt. (Unif. L. Comm’n 2010) (citing *Acerno v. Worthy Bros. Pipeline Corp.*, 656 A.2d 1085, 1090 (Del. 1995) (interpreting Uniform Commercial Code) and *Yale Univ. v. Blumenthal*, 621 A.2d 1304, 1307 (Conn. 1993) (interpreting Uniform Management of Institutional Funds Act)). See also, e.g., Gregory A. Elinson & Robert H. Sitkoff, *When a Statute Comes With a User Manual: Reconciling Textualism and Uniform Acts*, 71 Emory L.J. 1073 *passim* (2022); Harry Wilmer Jones, *Statutory Doubts and Legislative Intention*, 40 Colum. L. Rev. 957, 970 (1940).

contacts don't matter:

Paragraph (1) [of UTC section 107] allows a settlor to select the law that will govern the meaning and effect of the terms of the trust. *The jurisdiction selected need not have any other connection to the trust.* The settlor is free to select the governing law regardless of where the trust property may be physically located, whether it consists of real or personal property, and whether the trust was created by will or during the settlor's lifetime.⁸⁶

a. The "Strong Public Policy" Override

Whether my restatement's designation of Michigan to provide governing law will be "controlling"⁸⁷ in a given situation, however, depends on the matter at issue; for, as we have seen,⁸⁸ a settlor is free to designate governing law "unless the designation . . . is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue."⁸⁹ And we cannot suppose "that all questions of validity[, for example,] will be determined by the same law"⁹⁰: "What state has the most significant relationship with the trust [in question] may depend upon the particular ground of invalidity."⁹¹ It is possible, therefore, that *in spite of* Clients' having moved (according to Interpretation 1) "lock, stock, and barrel" to Michigan at or near the time of the restatement's execution,⁹² Ohio (or some other state that is not Michigan) will be "the jurisdiction having the most significant relationship to [some] matter"⁹³ that comes up under the terms of the restatement perhaps many years after the restatement is executed.⁹⁴

If that matter is covered by the UTC or some other uniform act that both Michigan and Ohio (or the other non-Michigan state in question) have enacted, it is unlikely that the restatement's designation of Michigan law will be "contrary to a strong public policy of [Ohio

For the proposition that decisions of foreign courts interpreting a given uniform act should be considered by courts in states that have enacted that act, see, for example, Robert S. Summers, *Statutory Interpretation in the United States*, in *Interpreting Statutes: A Comparative Study* 407, 427–28 (D. Neil MacCormick & Robert S. Summers eds., 1991).

⁸⁶ Unif. Tr. Code § 107 cmt. (emphasis added). This is a departure from the common law. *See, e.g.,* Restatement (Second) of Conflict of Laws § 270 (Am. L. Inst. 1971) ("An inter vivos trust of interests in movables is valid if valid . . . under the local law of the state designated by the settlor to govern the validity of the trust, provided that this state has a substantial relation to the trust . . ."); *id.* § 278 ("The validity of a trust of an interest in land is determined by the law that would be applied by the courts of the situs.").

⁸⁷ Unif. Tr. Code § 107(2) (emphasis added) ("[I]n the absence of a controlling designation in the terms of the trust . . ."). *See* Mich. Comp. Laws § 700.7107(b) (being Unif. Tr. Code § 107(2)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

⁸⁸ *See supra* text accompanying note 37.

⁸⁹ Unif. Tr. Code § 107(1) (emphasis added). *See* Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

⁹⁰ Restatement (Second) of Conflict of Laws § 270 cmt. e.

⁹¹ *Id.* *See also* Unif. Tr. Code § 106 ("The common law of trusts . . . supplement [the UTC], except to the extent modified by this [Code] or another statute of this State.").

⁹² *See supra* Section IV.B.

⁹³ *See supra* note 89 and accompanying text.

⁹⁴ As might be the case if, for example, contrary to Clients' present expectations (according to Interpretation 1), *see supra* Section IV.B, the trustee(s) eventually come to own directly (i.e., without an entity wrapper) land located in Ohio (or some other state that is not Michigan). *See supra* note 39 and accompanying text.

(or the other non-Michigan state in question) regarding that] matter.”⁹⁵ Indeed, such contrariety is unlikely in any case.⁹⁶ But we can’t rule it out entirely, and if it should occur, the matter in issue would be governed by Ohio law (or the law of the other non-Michigan state in question),⁹⁷ which means my restatement’s designation of Michigan to provide governing law is only *presumptively* controlling. But that is not to say that my restatement is in any way *wanting*; for the *T* trust instrument’s designation of Ohio to provide governing law is likewise only presumptively controlling: *any* designation of governing law described in UTC section 107(1) is subject to the section’s “strong public policy” override.⁹⁸

b. A Dismissible Objection

It might occur to someone, however, to question that. UTC section 107 is, after all, part of an articulated system, a “trust code,” made up primarily of rules of construction⁹⁹ or “default” rules¹⁰⁰ that “can be overridden in the terms of the trust.”¹⁰¹ And *in* that system, “[t]he provisions [that are] *not subject to override* are scheduled in Section 105(b),”¹⁰² *which contains no*

⁹⁵ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A). As to the “unlikel[ihood]” described in the text, see *supra* notes 38–43 and accompanying text.

⁹⁶ The examples of possible strong public policies provided in the *Restatement (Second) of Conflict of Laws* (Restatement of Conflicts) include policies against donative provisions tending to encourage divorce or criminal activity, see Restatement (Second) of Conflict of Laws § 269 cmt. i (Am. L. Inst. 1971), policies against disinheritance of spouses, see *id.* § 270 cmt. e, and policies against certain dispositions to charity in lieu of near relations, see *id.* On the other hand, the Restatement tells us that “[n]o such strong policy is involved in rules against perpetuities or rules against accumulations [of income] or rules as to indefiniteness of beneficiaries.” *Id.* § 269 cmt. i (emphasis added). The latter statement is perhaps no longer credible (assuming it *was* credible when the Restatement of Conflicts was drafted) with regard to a state that currently wants to *enforce* any of the rules mentioned. See, e.g., Stewart E. Sterk, *Rethinking Party Autonomy in Trust Law*, 97 Tul. L. Rev. 1097, 1100–01 (2023); Steven J. Horowitz & Robert H. Sitkoff, *Unconstitutional Perpetual Trusts*, 67 Vand. L. Rev. 1769, 1817–18 (2014). But the many states that have *thrown off* such rules (*since* the Restatement of Conflicts was drafted) have certainly *not* done so because they wish to *discourage* the vesting of transferred future interests, or regular distributions of trust income, or the creation of trusts for the benefit of definite or definitely ascertainable beneficiaries: a state’s *abrogation* of a rule against perpetuities (RAP), accumulations of income, or noncharitable purpose trusts represents a recognition, not of strong public policy, but of the *absence* of such a policy. See James P. Spica, *Power Tools for Choice of Law on Trust Validity*, 59 Real Prop. Tr. & Est. L.J. 179, 214–15 (2024). It is unlikely, therefore, that a “strong public policy” regarding remoteness of vesting, for example, should ever be found to have arisen between two RAP-reforming states like Ohio (see Ohio Rev. Code Ann. § 2131.08 (effecting “wait-and-see” liberalization)) and Michigan (see Mich. Comp. Laws § 554.93 (generally abrogating RAP-like rules as to movables held in trusts of specified vintage)).

⁹⁷ See Mich. Comp. Laws § 700.7107(b) (being Unif. Tr. Code § 107(2) (Unif. L. Comm’n 2010)) (“The meaning and effect of the terms of a trust are determined . . . [i]n the absence of a controlling designation in the terms of the trust, [by] the law of the jurisdiction having the most significant relationship to the matter at issue.”); see also Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

⁹⁸ And in this respect, UTC section 107(1) is a codification of common law. See, e.g., Restatement (Second) of Conflict of Laws § 270 (“An inter vivos trust of interests in movables is valid if valid . . . under the local law of the state designated by the settlor . . . provided that . . . the application of its law does not violate a strong public policy of the state with which, as to the matter at issue, the trust has its most significant relationship.”).

⁹⁹ In the sense of “devices that *attribute* intention to *individual* donors in particular circumstances on the basis of *common* intention.” Restatement (Third) of Prop.: Wills & Other Donative Transfers § 11.3 cmt. a (Am. L. Inst. 2003).

¹⁰⁰ “The Uniform Trust Code is primarily a default statute.” Unif. Tr. Code art. 1 gen. cmt.

¹⁰¹ *Id.*

¹⁰² *Id.* (emphasis added).

reference or allusion to UTC section 107.¹⁰³ So, why (the hypothesized questioner continues) should we not read a designation that says (as such designations sometimes *do*), “This [restatement] shall be construed and administered, and the validity of each trust hereunder shall be determined, in accordance with the laws of the State of Michigan, *without giving effect to its conflict of laws principles*”¹⁰⁴ as a *waiver* of MTC section 7107(a)’s “strong public policy” override¹⁰⁵ that is authorized by MTC section 7105(2)?¹⁰⁶

The answer, of course, is that on our questioner’s reading of UTC section 105, that section is self-defeating. Section 105 is evidently meant to distinguish the “default” provisions of the Code,¹⁰⁷ which “can be overridden in the terms of the trust,”¹⁰⁸ from *mandatory* provisions that, thanks to section 105, are “*not* subject to override.”¹⁰⁹ But if (as our questioner would have it) section 105 *itself* is a default provision, *there can be no mandatory provision* in the Code; for in that case, it is available to a settlor to waive section 105(b)’s enforcement of any of the provisions cited or alluded to in section 105(b)—*reductio ad absurdum*. And a reading that renders a statutory provision absurd in the sense of being *self-defeating* is decidedly to be shunned,¹¹⁰ even if it means “that words which are in the statute are ignored or words which are not there are read in.”¹¹¹ Hence, UTC section 105(b) is no doubt to be read as if it says, “The terms of a trust prevail over any provision of *Articles 2 through 10* of this [Code] except”¹¹² And that makes UTC section 107(1)’s “strong public policy” override¹¹³ ineradicable.

D. The Upshot on Interpretation 1

But again, that is not a defect of the restatement I prepare for Clients under Interpretation 1: my restatement’s designation of Michigan to provide governing law is every bit as good as the *T* trust instrument’s designation of Ohio for that purpose.¹¹⁴ So, if Clients are prepared to regard the risk that there may be assets titled or directed to the trustee(s) of *T* of which Clients are unaware as negligible,¹¹⁵ then *given* that *T* is a valid, revocable trust under Ohio law, Clients’ willingness to republish their pour-over wills and protectively retitle or

¹⁰³ See Unif. Tr. Code § 105(b). See also Mich. Comp. Laws § 700.7105(2) (being Michigan’s version of Unif. Tr. Code § 105(b)); Ohio Rev. Code Ann. § 5801.04(B) (being Ohio’s version of Unif. Tr. Code § 105(b)).

¹⁰⁴ The language quoted in the text is taken verbatim (though emphasis has been added) from a trust instrument, drafted by an attorney licensed to practice in Michigan, that I reviewed in July of this year.

¹⁰⁵ I.e., the “unless . . .” clause of Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1), quoted *supra* text accompanying note 37).

¹⁰⁶ *Id.* § 700.7105(2) (being Michigan’s version of Unif. Tr. Code § 105(b)) (“The terms of a trust prevail over any provision of this article except . . .”).

¹⁰⁷ See *supra* note 100.

¹⁰⁸ See *supra* note 101 and accompanying text.

¹⁰⁹ Unif. Tr. Code art. 1 gen. cmt. (emphasis added).

¹¹⁰ “[I]n the construction of a statute, [the court is] to adhere to the ordinary meaning of the words used . . . unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance.” Cross, *supra* note 62, at 16 (quoting *Becke v. Smith* (1836) 2 M&W 191 at 195 (Parke, B.)).

¹¹¹ *Id.*

¹¹² *Cf.* Unif. Tr. Code § 105(b) (“The terms of a trust prevail over any provision of this [Code] except . . .”). See also Mich. Comp. Laws § 700.7105(2); Ohio Rev. Code Ann. § 5801.04(B).

¹¹³ UTC section 107 being found in *Article 1* of the UTC. See Unif. Tr. Code § 107. See also Mich. Comp. Laws § 700.7107 (being Unif. Tr. Code § 107).

¹¹⁴ See *supra* text accompanying note 98; see generally *supra* Section V.C.2.a.

¹¹⁵ See *supra* text accompanying note 35.

redirect trust assets they're *aware* of (and the other assumptions that inform Interpretation 1),¹¹⁶ I can prepare a restatement of *T* that will meet Clients' "need" *regardless* of its effect under Ohio law.¹¹⁷ And that means that I can assist Clients without engaging in unauthorized practice of law, without breaching my duty of competence, and without consulting Ohio counsel.¹¹⁸

VI. ANALYSIS OF INTERPRETATION 2

On Interpretation 2, however, the restatement or amendment I prepare for Clients has to be valid as such under Ohio law because Clients reasonably regard the trouble of protectively retitling or redirecting the *T* trust assets as prohibitive (assuming *T* is valid and revocable) and they have reason to expect that an Ohio court could one day be asked to acknowledge or repudiate the terms of *T* as amended.¹¹⁹

A. The Threshold Questions of *T*'s Validity and Revocability

Interpretation 2 also leaves open the questions whether *T* is valid and, if so, revocable¹²⁰ and, therefore, subject to amendment.¹²¹ We know that the *T* trust instrument provides that *T* can "be amended or revoked by the grantor[s]."¹²² The threshold questions, then, are whether that is a provision of a valid trust, and if so, whether it (i.e., that provision) is effective.¹²³

1. Ohio Law Governs the Validity and Revocability of *T*

As a lawyer licensed to practice in Michigan, I am certainly authorized and competent to ask how a Michigan court would answer these questions. And we know that a Michigan court would refer them both (as between Michigan and Ohio at least) to Ohio law; for, again,¹²⁴ (1) the *T* trust instrument explicitly designates Ohio law to govern *T*'s validity and construction¹²⁵ and (2) UTC section 107(1) provides that that designation is controlling "unless [it] is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue."¹²⁶ And again,¹²⁷ it is possible that Michigan is "the jurisdiction having the most significant relationship to the matter[s]"¹²⁸ of the validity and revocability of *T*.¹²⁹ But it is *not*

¹¹⁶ See *supra* Section IV.B.

¹¹⁷ See *supra* Section V.B–C.

¹¹⁸ See *supra* Part III.

¹¹⁹ See *supra* Section IV.C.

¹²⁰ See *supra* text accompanying note 24. Again, Clients cannot restate or amend a trust that is either nonexistent or irrevocable. See *supra* note 23 and accompanying text.

¹²¹ "A power of revocation includes the power to amend." Unif. Tr. Code § 602 cmt. (Unif. L. Comm'n 2010); accord Restatement (Third) of Trusts § 63 cmt. g (Am. L. Inst. 2003).

¹²² See *supra* Part II.

¹²³ At common law, the latter question would be just whether the provision is sufficient to overcome the presumption that—that is, to displace the rule of construction according to which—an express trust is *irrevocable*. See, e.g., Restatement (Second) of Trusts § 330(1) (Am. L. Inst. 1959) ("The settlor has power to revoke the trust if and to the extent that by the terms of the trust he reserved such a power.").

¹²⁴ See *supra* Section V.A.

¹²⁵ See *supra* text accompanying note 12.

¹²⁶ Unif. Tr. Code § 107(1) (Unif. L. Comm'n 2010) (quoted *supra* note 37). See Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)).

¹²⁷ See *supra* Section V.A.

¹²⁸ Mich. Comp. Laws § 700.7107(a).

¹²⁹ To the extent, for example, the trustee(s) of *T*, *qua* trustee(s), own(s) directly (i.e., without an entity wrapper) land located in Michigan. See *supra* note 39.

possible that the *T* trust instrument's designation of Ohio law is "contrary to a strong public policy of [Michigan regarding those] matter[s]"¹³⁰ because Ohio has enacted the same UTC provisions regarding trust creation¹³¹ and revocability,¹³² as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC.¹³³ And, again, both states have enacted similar exhortations (of their respective judiciatures) to multistate uniformity of interpretation.¹³⁴ Since there can't be contrariety without difference,¹³⁵ UTC section 107(1)'s "strong public policy" override¹³⁶ is inapplicable, and (as between Michigan and Ohio at least) Ohio law therefore governs the validity and revocability of *T*.¹³⁷

2. Conflict of Laws and the Local Necessity of Legal Cosmopolitanism

Now, I've neither engaged in unauthorized practice of law nor breached my duty of competence in reasoning—and in enabling myself, by research, to reason—in this way to the conclusion that *according to Michigan law*, Ohio law governs the validity and revocability of *T*. Like Michigan's other conflict of laws rules, MTC section 7107(a)¹³⁸ is part of *Michigan's law*.¹³⁹ And though like other choice-of-law rules, section 7107(a) is *jurisdiction* selecting,¹⁴⁰ its application—especially the determination whether the law of a designated state is "is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue"¹⁴¹—may require a comparison of the content of the local laws of interested states.¹⁴² Thus, conflict of laws rules are liable to provide a *domestically* motivated instance of the general necessity that

a lawyer conducting activities in the lawyer's home state may advise a client about the law of another state, a proceeding in another state, or a transaction there, *including conducting research in the law of the other state, advising the client about the*

¹³⁰ Mich. Comp. Laws § 700.7107(a).

¹³¹ Viz., Ohio Rev. Code Ann. §§ 5801.04(B)(1) (being Unif. Tr. Code § 105(b)(1) (Unif. L. Comm'n 2010)), 5804.01 (including Unif. Tr. Code § 401), 5804.02 (including Unif. Tr. Code § 402), 5806.02(A) (being Ohio's version of Unif. Tr. Code § 602(a)).

¹³² Viz., *id.* § 5806.02(C) (being Ohio's version of Unif. Tr. Code § 602(c)).

¹³³ See Mich. Comp. Laws §§ 700.7105(2)(a), .7401, .7402, .7602(1), (3).

¹³⁴ See *supra* note 42.

¹³⁵ See *supra* note 43 and accompanying text.

¹³⁶ I.e., the "unless . . ." clause of Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1), quoted *supra* text accompanying note 37).

¹³⁷ See *id.*

¹³⁸ See *supra* note 136.

¹³⁹ "Conflict of Laws is *that part of the law of each state* which determines what effect is given to the fact that the case may have a significant relationship to more than one state." Restatement (Second) of Conflict of Laws § 2 (Am. L. Inst. 1971) (emphasis added). See also *id.* §§ 4(2) ("[T]he 'law' of a state is that state's local law, together with its rules of Conflict of Laws."), 6(1) ("A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.").

¹⁴⁰ In the sense that the rule points *directly*, not to a rule of decision (on the matter in issue), but to a *state*, "a territorial unit having a distinct general body of law," Restatement (Second) of Conflict of Laws § 3, *regardless* of the content of any of the rules comprised by that body of law. See, e.g., David F. Cavers, *A Critique of the Choice-of-Law Problem*, 47 Harv. L. Rev. 173 (1933), reprinted in David F. Cavers, *The Choice of Law: Selected Essays, 1933–1983*, at 3, 9 (1985) ("The conflicts rule indicates in which jurisdiction the appropriate law may be found. . . . Not until its admission for that purpose does the content of that law become material.").

¹⁴¹ Mich. Comp. Laws § 700.7107(a).

¹⁴² See *supra* Sections V.A, VI.A.1.

application of that law, and drafting legal documents intended to have legal effect there. There is no per se bar against such a lawyer giving a formal opinion based in whole or in part on the law of another jurisdiction, but a lawyer should do so only if the lawyer has adequate familiarity with the relevant law.¹⁴³

And, of course, there are two factors that contribute enormously to my ability to achieve “adequate familiarity,”¹⁴⁴ for my purposes, with Ohio law. One is technology: “Modern communications, including ready electronic connection to much of the law of every state, makes concern about a competent analysis of a distant state’s law unfounded.”¹⁴⁵ The other is that Michigan and Ohio are both UTC states that have legislatively acknowledged “the need to promote uniformity of the law with respect to the [UTC’s] subject matter.”¹⁴⁶

3. The Leverage of Uniformity in Answering the Threshold Questions

That commitment in principle to uniformity inevitably leverages the knowledge of the UTC that a lawyer gains from the particular enactment(s) of that Code in the state(s) in which the lawyer is licensed to practice. And this is illustrated by my analysis of our threshold questions about the validity and revocability of *T*;¹⁴⁷ for *en route* to the conclusion that a Michigan court would refer those questions to Ohio law,¹⁴⁸ I’ve learned that at least as to matters as rudimentary as trust creation and revocability, to know the local law of Michigan is to know the local law of Ohio because, again, Ohio has enacted the same UTC provisions regarding trust creation and revocability, as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC,¹⁴⁹ and both states have enacted similar exhortations (of their respective judiciatures) to multistate uniformity of interpretation.¹⁵⁰ So, by knowing that *T* would be a valid, revocable trust if Michigan law governed the meaning and effect of *T*’s terms from inception,¹⁵¹ I know that *T* is a valid, revocable trust under the local law of Ohio.

¹⁴³ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e (Am. L. Inst. 2000) (emphasis added); *accord ACTEC Commentaries*, *supra* note 4, at 212 (“With the adoption of paragraph (c)(4) of MRPC 5.5, a transactional lawyer, in the circumstances described in that paragraph, may provide . . . legal counsel regarding the laws of a non-admitted jurisdiction.”).

For example, a Chicago lawyer providing estate counseling for Illinois clients is likely to find multiple occasions to analyze and opine on the laws of Wisconsin, Iowa, Indiana, and Michigan regarding titling, tax, and similar issues. In addition, the Chicago lawyer may need to prepare deeds and other documents according to the laws of one or more of these jurisdictions. Provided the Chicago lawyer otherwise complies with paragraph (c), the lawyer’s legal services regarding the surrounding non-admitted jurisdictions would constitute practicing law in those jurisdictions on a “temporary basis.”

Id. at 214.

¹⁴⁴ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e.

¹⁴⁵ *Id.*

¹⁴⁶ Ohio Rev. Code Ann. § 5811.01. *See* Mich. Comp. Laws § 700.1201(d) (“This act [including the MTC] shall be liberally construed and applied to . . . make the law uniform among the various jurisdictions, both within and outside of this state.”).

¹⁴⁷ *See supra* Section VI.A.1.

¹⁴⁸ *See supra* text accompanying note 137.

¹⁴⁹ *See supra* notes 131–33 and accompanying text.

¹⁵⁰ *See supra* note 134 and accompanying text.

¹⁵¹ I.e., without regard to the change of governing law (from Ohio’s to Michigan’s) that is to be effected by the restatement or amendment I prepare. *See supra* text accompanying notes 26–27.

Because Clients' motivation (whatever it is exactly) for giving *T* a Michigan orientation is sufficiently compelling,¹⁵² my deployment on Clients' behalf, of my knowledge of the local law of Ohio concerning trust creation and revocability (which I've obtained in determining that according to Michigan law, Ohio law governs those matters with respect to *T*) no doubt "arise[s] out of or [is] reasonably related to [my] practice in [Michigan]"¹⁵³ within the meaning of MRPC rule 5.5's permissive authorization for me to "provide legal services on a temporary basis in [Ohio]."¹⁵⁴ And that makes sense; for my using my knowledge in this way "do[es] not create an unreasonable risk to the interests of [my] clients, the public or the courts,"¹⁵⁵ and an "ethical" prohibition on my doing so (if there *were* one) "could seriously inconvenience [C]lients [if] [r]etaining [Ohio] counsel [should] cause . . . delay and expense and . . . require [C]lient[s] to deal with unfamiliar counsel."¹⁵⁶ So, I can, without engaging in unauthorized practice of law or breaching my duty of competence, advise Clients not only that a Michigan court would find that (as between Michigan and Ohio at least) the validity and revocability of *T* are questions of Ohio law¹⁵⁷ but that an Ohio court would find the same¹⁵⁸ and that *T* is a valid, *revocable* trust under Ohio law.¹⁵⁹

B. The Validity of the Restatement or Amendment I Prepare

A straightforward adaptation of the analysis of the preceding section will likewise yield that I can, without engaging in unauthorized practice of law or breaching my duty of competence, advise Clients not only that a Michigan court would find that (as between Michigan and Ohio at least) the validity of the restatement or amendment of *T* that I prepare is a question of Ohio law but that an Ohio court would find the same and that the restatement or amendment I prepare will be, as is needful,¹⁶⁰ valid as such under Ohio law as well as the law of Michigan.

1. Ohio Law Governs

As a lawyer licensed to practice in Michigan, I am certainly authorized and competent to ask how a Michigan court would answer the question whether the restatement or amendment of *T* that I prepare for Clients is valid as such. And we know that (as between Michigan and Ohio at least) a Michigan court would refer that question to Ohio law because, again,¹⁶¹ (1) the *T* trust instrument explicitly designates Ohio law to govern *T*'s validity and construction¹⁶² and

¹⁵² See *supra* note 32 and accompanying text.

¹⁵³ Model Rules of Pro. Conduct r. 5.5(c)(4) (Am. Bar Ass'n 2005).

¹⁵⁴ *Id.* r. 5.5(c).

¹⁵⁵ *Id.* r. 5.5 cmt. 5. See also *ACTEC Commentaries*, *supra* note 4, at 217 (indicating that avoidance of these risks is "fundamental[]" to MRPC rule 5.5's regulation of multijurisdictional practice); Restatement (Third) of the L. Governing Lawyers § 3 cmt. b (Am. L. Inst. 2000) (indicating that "the need to provide effective and efficient legal services to persons . . . with interstate legal concerns" moderates regulation of multistate practice by lawyers).

¹⁵⁶ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e.

¹⁵⁷ See *supra* Section VI.A.1.

¹⁵⁸ Because Ohio, like Michigan, has enacted UTC section 107(1) as part of its general enactment of the UTC. See *supra* Sections V.A, VI.A.1.

¹⁵⁹ See *supra* notes 147–51 and accompanying text.

¹⁶⁰ See *supra* note 119 and accompanying text.

¹⁶¹ See *supra* Sections V.A, VI.A.1.

¹⁶² See *supra* text accompanying note 12.

(2) under UTC section 107(1), that designation is presumptively controlling.¹⁶³ It is possible that Michigan is “the jurisdiction having the most significant relationship to the matter”¹⁶⁴ of the validity of the restatement or amendment.¹⁶⁵ But it is *not* possible that the *T* trust instrument’s designation of Ohio law is “contrary to a strong public policy of [Michigan regarding that] matter”¹⁶⁶ because Ohio has enacted the same UTC provision regarding amendment of revocable trusts, as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC.¹⁶⁷ And both states have enacted similar exhortations (of their respective judiciatures) to multistate uniformity of interpretation.¹⁶⁸ Since there can’t be contrariety without difference,¹⁶⁹ UTC section 107(1)’s “strong public policy” override¹⁷⁰ is inapplicable in this case, and (as between Michigan and Ohio at least) Ohio law therefore governs the validity of the restatement or amendment I prepare for Clients.¹⁷¹

2. The Leverage of Uniformity Again

But *en route* to that conclusion, I’ve learned that as to the “method”¹⁷² by which “[t]he settlor may . . . amend a revocable trust,”¹⁷³ to know the local law of Michigan is to know the local law of Ohio because, again, Ohio has enacted the same UTC provisions regarding amendment of revocable trusts, as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC,¹⁷⁴ and both states have enacted similar exhortations (of their respective judiciatures) to multistate uniformity of interpretation.¹⁷⁵ So, by knowing that I can prepare a restatement or amendment of *T* that would be valid as such if Michigan law governed the meaning and effect of *T*’s terms from inception,¹⁷⁶ I know that I can prepare a restatement or amendment of *T* that will be valid as such under the local law of Ohio.

Because Clients’ motivation (whatever it is exactly) for giving *T* a Michigan orientation is sufficiently compelling,¹⁷⁷ my deployment on Clients’ behalf, of my knowledge of the local law of Ohio concerning amendment of revocable trusts (which I have obtained in determining that according to Michigan law, Ohio law governs that matter with respect to *T*) no doubt

¹⁶³ See Unif. Tr. Code § 107(1) (Unif. L. Comm’n 2010) (quoted *supra* text accompanying note 37); Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁶⁴ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A).

¹⁶⁵ To the extent, for example, the trustee(s) of *T*, *qua* trustee(s), own(s) directly (i.e., without an entity wrapper) land located in Michigan. See *supra* note 39.

¹⁶⁶ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A).

¹⁶⁷ See Ohio Rev. Code Ann. § 5806.02(C) (quoted *supra* text accompanying note 41) (being Ohio’s version of Unif. Tr. Code § 602(c)); Mich. Comp. Laws § 700.7602(3) (quoted *supra* note 41) (being Michigan’s version of Unif. Tr. Code § 602(c)).

¹⁶⁸ See *supra* note 42.

¹⁶⁹ See *supra* note 43 and accompanying text.

¹⁷⁰ I.e., the “unless . . .” clause of Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1), quoted *supra* text accompanying note 37).

¹⁷¹ See *id.*

¹⁷² Ohio Rev. Code Ann. § 5806.02(C) (quoted *supra* text accompanying note 41) (being Ohio’s version of Unif. Tr. Code § 602(c)).

¹⁷³ *Id.*

¹⁷⁴ See *supra* notes 166–67 and accompanying text.

¹⁷⁵ See *supra* note 168 and accompanying text.

¹⁷⁶ See *supra* note 151.

¹⁷⁷ See *supra* note 152 and accompanying text.

“arise[s] out of or [is] reasonably related to [my] practice in [Michigan]”¹⁷⁸ within the meaning of MRPC rule 5.5’s permissive authorization for me to “provide legal services on a temporary basis in [Ohio].”¹⁷⁹ That makes sense because my using my knowledge in this way does not threaten the interests of clients, the public, or the courts that MRPC rule 5.5 aims to protect¹⁸⁰ and an “ethical” prohibition on my doing so (if there *were* one) would therefore expose my clients to an unnecessary risk of serious inconvenience.¹⁸¹ So, I can, without engaging in unauthorized practice of law or breaching my duty of competence, advise Clients not only that a Michigan court would find that (as between Michigan and Ohio at least) the validity of the restatement or amendment that I prepare is a question of Ohio law¹⁸² but that an Ohio court would find the same¹⁸³ and that the restatement or amendment of *T* that I prepare is valid as such under Ohio law as well as the law of Michigan.¹⁸⁴

C. Change to Michigan for Governing Law

1. Administration

We’ve already seen that under UTC section 108(a),¹⁸⁵ the designation (in the restatement or amendment I prepare for Clients) of Michigan (or a *place* in Michigan) as *T*’s principal place of administration will determine judicial jurisdiction and that the local law of Michigan governs *T*’s administration if either (1) a trustee of *T* has a principal place of business or residence in Michigan or (2) all or part of the administration of *T* occurs in Michigan.¹⁸⁶ We have not assumed in Interpretation 2 that Clients are trustees of *T*.¹⁸⁷ If they aren’t, “a sufficient connection”¹⁸⁸ will have otherwise to be established.

2. Validity and Construction

As we’ve also seen, there are neither too many contacts with Ohio nor too few with Michigan for the restatement or amendment I prepare to *designate* Michigan to provide law governing validity and construction.¹⁸⁹ Whether that designation will be “controlling”¹⁹⁰ in a given situation, depends ineradicably on the matter at issue¹⁹¹: it is possible that Ohio (or some other state that is not Michigan) will be “the jurisdiction having the most significant relationship

¹⁷⁸ Model Rules of Pro. Conduct r. 5.5(c)(4) (Am. Bar Ass’n 2005).

¹⁷⁹ *Id.* r. 5.5(c).

¹⁸⁰ See *supra* note 155 and accompanying text.

¹⁸¹ See *supra* note 156 and accompanying text.

¹⁸² See *supra* Section VI.B.1.

¹⁸³ Because Ohio, like Michigan, has enacted UTC section 107(1) as part of its general enactment of the UTC. See *supra* Sections V.A, VI.A.1, B.1.

¹⁸⁴ See *supra* notes 172–76 and accompanying text.

¹⁸⁵ See *supra* Section V.C.1.

¹⁸⁶ See Ohio Rev. Code Ann. § 5801.07(A) (being Unif. Tr. Code § 108(a) (Unif. L. Comm’n 2010), quoted *supra* note 79).

¹⁸⁷ See *supra* note 28 and accompanying text. Cf. *supra* Section IV.B.

¹⁸⁸ Ohio Rev. Code Ann. § 5801.07(A) (being Unif. Tr. Code § 108(a), quoted *supra* note 78).

¹⁸⁹ See *supra* notes 82–86 and accompanying text.

¹⁹⁰ Unif. Tr. Code § 107(2) (emphasis added) (“[I]n the absence of a controlling designation in the terms of the trust . . .”). See Mich. Comp. Laws § 700.7107(b) (being Unif. Tr. Code § 107(2)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁹¹ See *supra* Sections V.C. 2.

to [some] matter”¹⁹² that comes up under the terms of the restated or amended trust,¹⁹³ and in that case, the law of Ohio (or of the other non-Michigan state in question) will govern the matter at issue.¹⁹⁴ But that is not a defect of the restatement or amendment that I prepare under Interpretation 2; for *any* designation of governing law described in UTC section 107(1)¹⁹⁵ is subject to the section’s “strong public policy” override,¹⁹⁶ and my restatement or amendment’s designation of Michigan to provide governing law is therefore every bit as good as the original *T* trust instrument’s designation of Ohio for that purpose.¹⁹⁷

VII. CONCLUSION

What matters most on both of our alternative Interpretations is the confluence of Clients’ having a good reason to seek the advice of someone knowledgeable about the law of Michigan in particular¹⁹⁸ and a UTC choice-of-law rule. On Interpretation 1, the independence of the place-of-execution reference in MTC section 7403¹⁹⁹ allows me to prepare a restatement of *T* that will meet Clients’ “need” *regardless* of the restatement’s effect under Ohio law²⁰⁰ and, thereby, makes Ohio law (and the possibility of consulting Ohio counsel) practically irrelevant.²⁰¹ Interpretation 2 requires that the restatement or amendment that I prepare be valid as such under Ohio law, but the process of *deducing* that requirement *under MTC section 7107(a)*²⁰² (that is, from the point of view of a *Michigan* court), and of testing that section’s “strong public policy” override²⁰³ in particular, exemplifies the *domestic* necessity that “a lawyer conducting activities *in the lawyer’s home state*”²⁰⁴ can, without engaging in unauthorized practice of law, “advise a client about the law of another state . . . , including conducting research in the law of the other state, advising the client about the application of that law, and drafting legal documents intended to have legal effect there.”²⁰⁵ For as *both* of our Interpretations demonstrate, it may be that the “lawyer’s home state[’s]”²⁰⁶ conflict of laws rules²⁰⁷ require nothing less.²⁰⁸

To that extent, the ethical risk of the lawyer’s “advis[ing] a client about the law of

¹⁹² Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁹³ As might be the case to the extent, for example, the trustee(s) come to own directly (i.e., without an entity wrapper) land located in Ohio (or some other state that is not Michigan). *See supra* note 39 and accompanying text.

¹⁹⁴ *See* Mich. Comp. Laws § 700.7107(b) (being Unif. Tr. Code § 107(2)) (“The meaning and effect of the terms of a trust are determined . . . [i]n the absence of a controlling designation in the terms of the trust, [by] the law of the jurisdiction having the most significant relationship to the matter at issue.”). *See also* Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁹⁵ Unif. Tr. Code § 107(1) (quoted *supra* text accompanying note 37). *See also* Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁹⁶ *See supra* note 98 and accompanying text.

¹⁹⁷ *See supra* Section V.D.

¹⁹⁸ *See supra* note 32 and accompanying text.

¹⁹⁹ Mich. Comp. Laws § 700.7403 (quoted *supra* note 29) (being Unif. Tr. Code § 403).

²⁰⁰ *See supra* Sections V.B–D.

²⁰¹ *See supra* Part V.

²⁰² Mich. Comp. Laws § 700.7107(a) (discussed *supra* Sections VI.A.1, B.1) (being Unif. Tr. Code § 107(1)).

²⁰³ *See supra* note 170 and accompanying text.

²⁰⁴ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e (Am. L. Inst. 2000) (emphasis added) (quoted *supra* text accompanying note 143). *See supra* Section VI.A.2.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ In my case, MTC section 7107(a). *See supra* Sections V.A, VI.A.1, B.1.

²⁰⁸ *See supra* note 142 and accompanying text.

another state . . . , including conducting research in the law of the other state . . . ”²⁰⁹ is not unauthorized practice of law but breach of the duty of competence²¹⁰—the risk that “the lawyer [may not have] adequate familiarity with the relevant law.”²¹¹ That risk is generally mitigated by technology—“including ready electronic connection to much of the law of every state.”²¹² But in this case, it is also mitigated by Michigan and Ohio’s both being UTC states that have enacted standard UTC provisions on the matters at issue and legislatively acknowledged “the need to promote uniformity of the law with respect to [those] matter[s].”²¹³ That congruity fairly *translates* my knowledge of Michigan law on the matters at issue into knowledge of the same departments of Ohio law. Indeed, the knowledge of Ohio law that I obtain on Interpretation 2, just *en route* to the conclusion that *under MTC section 7107(a)*, a Michigan court would find (as between Michigan and Ohio at least) the revocability of *T* and the validity of the restatement or amendment that I prepare to be questions of *Ohio law*²¹⁴ is sufficient for me to advise Clients that an Ohio court would find the same²¹⁵ and that the restatement or amendment I prepare, including its designation of Michigan to provide governing law, will be valid in Ohio as well as Michigan.²¹⁶ Happily for Clients, I have no “ethical” obligation to affect to disown such knowledge.²¹⁷

JPS

²⁰⁹ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e (Am. L. Inst. 2000) (quoted *supra* text accompanying notes 143, 204).

²¹⁰ Within the meaning of MRPC rule 1.1. *See supra* note 4.

²¹¹ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e (quoted *supra* text accompanying note 143).

²¹² *Id.* (quoted *supra* text accompanying note 145).

²¹³ Ohio Rev. Code Ann. § 5811.01. *See* Mich. Comp. Laws § 700.1201(d) (“This act [including the MTC] shall be liberally construed and applied to . . . make the law uniform among the various jurisdictions, both within and outside of this state.”).

²¹⁴ *See supra* Sections VI.A.1, B.1.

²¹⁵ Because Ohio, like Michigan, has enacted UTC section 107(1) as part of its general enactment of the UTC. *See supra* Section VI.A.1, B.1.

²¹⁶ *See supra* Sections VI.B.2., C.

²¹⁷ *See supra* notes 156, 181 and accompanying text.

ATTACHMENT 4

Tax Nugget

To: Probate and Estate Planning Council

From: J.V. Anderton on behalf of the Tax Committee

RE: October 2025 Tax Nugget

Estate of Spizzirri v Commissioner, 136 F.4th 1336 (11th Cir, 2025) is the review of a tax court case involving the deductibility of claims against the estate. Specifically, the issue was whether the terms of a premarital agreement (subsequently amended during the marriage) stating that Mr. Spizzirri would transfer \$6 million to his wife and \$3 million to her children from a prior relationship upon his death, “in lieu of any other rights which may be available” to the wife and her children would be deductible under IRC 2053.

Eventually the happy couple became estranged, and Mr. Spizzirri modified his will to be consistent with the premarital agreement as to his wife, but did not include the payment to the step-children. After his death, the step-children sued, and the estate made the payments to them, and tried to deduct those payment on the Form 706.

The 11th Circuit held that the payments were not “contracted and bona fide” (and thus did not discuss if they were for adequate and full consideration) under IRC 2053(c)(1)(A). The applicable Treasury Regulations list 5 factors to determine if a transfer was contracted bona fide. 20.2053-1(b)(2)(ii). After reviewing the factors, the court found the transfer was agreed to in the premarital agreement to keep his wife happy (prior to the estrangement), and thus not contracted bona fide.

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ATTACHMENT 5

1. **Undue Influence Ad Hoc Committee**

Chair: Kenneth Silver – ksilver@hertzschram.com

40 minutes (9:00 – 9:40 AM)

Mission

Mission: Consider the definition of undue influence and attendant evidentiary presumptions, and make recommendations to the Council regarding such matters.

Committee Members

Kenneth F. Silver, Chair
Sandra D. Glazier
Hon. Michael L. Jaconette
Warren H. Krueger, III

John Mabley
Andrew W. Mayroas
Laura E. Morris
Hon. David Murkowski

Kurt A. Olson
David L.J.M. Skidmore

Summary

The Undue Influence *ad hoc* Committee has been actively working for several years on draft legislation to provide guidance to Michigan Courts regarding undue influence, the presumption of undue influence, and burdens of proof.

This project has received significant input from Council over the years, and this has been a very difficult subject matter to address. A more detailed summary of the history of this project can be found in the [CSP materials for the January 10, 2025, meeting](#).

The history of the project is not necessary for an understanding of the attachments or the request for CSP action.

At the last two CSP meetings, portions of the statute were reviewed, and comments were provided. The committee intends to pick-up where it left off and continue with the review of the draft and solicit comments on the remainder of the draft.

Attachments

EXHIBIT A - MCL 700.2524 Undue Influence

EXHIBIT B - MCL 700.2521 Burden of Proof in Undue Influence Contests

CSP ACTION

The committee seeks CSP review, comments, and proposed changes to the draft statutes. Questions, recommendations, and proposed changes can be submitted to: Ken Silver ksilver@hertzschram.com and Sandy Glazier (sandra@sdblazierpc.com).

JPS COMMENT One written comment has been submitted directly to the CSP chair, with a request for inclusion in the materials. See EXHIBIT C.

EXHIBIT A - MCL 700.2524 Undue Influence

MCL 700.2524 Undue Influence:

- (A) A donative transfer is procured by undue influence if the alleged influencer exerted such influence over the donor that it overcame the donor's free will and caused the donor to make a donative transfer that the donor would not otherwise have made. The amount of persuasion necessary to overcome a donor's free will may be less when a donor has vulnerabilities that could impair the donor's ability to withstand another's influence. In determining whether a result was produced by undue influence, the factors that may be considered include, but are not limited to, the following:
- (1) The alleged influencer's status as a fiduciary, confidante, close family member, care provider, health-care professional, legal professional, financial professional, spiritual adviser, or the donor's perception of the alleged influencer's expertise
 - (2) The existence of suspicious circumstances, which may include:
 - (a) The vulnerability of the donor. Evidence of vulnerability may include, but is not limited, to incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, dependency, bereavement, estrangement from children, fear of change in living situation, or whether the alleged influencer knew or should have known of the donor's vulnerability.
 - (b) Controlling necessities of life, sleep, medication, the donor's interactions with others, or access to information.

- (c) Use of force, threat, undue flattery, intimidation, coercion, fraud or misrepresentation.
 - (d) Procurement or direct participation in changes to an estate plan or personal or property rights, use of haste or secrecy in effecting those changes, affecting changes at inappropriate times and places, or claims of expertise in effecting changes.
 - (e) Efforts to negatively influence the donor's perception of family members, advisors or otherwise interfere with family, business or professional relationships; or,
 - (f) The existence of other suspicious circumstances.
- (B) For purposes of this section and MCL 700.2725, as it relates to any instrument, gift, or other transaction alleged to be the product of undue influence, the term "donor" shall mean a testator, grantor, settlor, transferor or principal. The term "instrument" shall mean any instrument, whether written, governing or otherwise.

EXHIBIT B - MCL 700.2521 Burden of Proof in Undue Influence Contests
MCL 700.2521 Burden of Proof in Undue Influence Contests.

- (a) The challenger of an instrument, gift or transaction has the burden of proving by a preponderance of the evidence that it was the product of undue influence, unless all of the following elements are established:
 - (1) A confidential relationship exists between the donor and the alleged influencer;
 - (2) The alleged influencer, or an interest represented by an alleged influencer, benefits from a transaction; and,
 - (3) The alleged influencer had an opportunity to influence the donor's decision in the transaction.
 - (4) The existence of suspicious circumstances referenced in MCL 700.2524(A)(2)(a)-(f).
- (b) The mere fact that the person alleged to have exerted undue influence over the donor is married to the donor or is the donor's child, shall not suffice to establish the existence of a confidential relationship for purposes of this statute.
- (c) Whether all of the elements set forth in Section 2521(a)(1) through (4) have been established by a preponderance of the evidence is a question for the court.
- (d) When all of the elements set forth in Section 2521(a)(1) through (4) are found to exist, then the proponent of an instrument, recipient of a gift, or other party to a transaction, has the burden of proving, by a preponderance of evidence, that the instrument, gift, or transaction is not the product of undue influence.
- (e) "Confidential relationship," for purposes of this section, means a fiduciary, reliant, or dominant-subservient relationship.

- (1) A fiduciary relationship is one in which the relationship arises from a legally recognized fiduciary obligation. Examples of legally recognized fiduciary relationships include, but are not limited to, the following: lawyer/client, stockbroker/investor, principal/agent, guardian/ward, trustee/beneficiary, physician/patient, accountant/client, and financial advisor/client.
- (2) A reliant relationship is one where there is a relationship between the donor and alleged influencer based on special trust and confidence and may include circumstances where the donor was guided by the judgment or advice of the alleged influencer or placed confidence in the belief that the alleged influencer would act in the interest of the donor. Examples of reliant relationships include, but are not limited to, the following:
 - (A) The donor relies on the alleged influencer to conduct banking or other financial transactions;
 - (B) Where trust is placed by the donor in the alleged influencer who, as a result, gains superiority or influence over the donor;
 - (C) When the alleged influencer assumes control over, and responsibility for, the donor, or is placed in an express or implied position of authority to represent or act on behalf of the donor;
 - (D) When the donor is reliant upon the alleged influencer for care; or,
 - (E) When a clergy/penitent relationship exists between the donor and the alleged influencer.
- (3) A dominant-subservient relationship is one where the donor is prepared to unquestioningly comply with the direction of the alleged influencer.

Examples of dominant-subservient relationships include, but are not limited to, relationships between a hired caregiver and client, or relative and an ill or feeble donor, when the donor is dependent upon the alleged influencer for activities of daily living or instrumental activities of daily living.

- (f) The definitions of “donor” and “instrument” set forth in MCL 700.2724, shall also apply to this section.

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